

MONTANA LEGISLATIVE HISTORY

Chapter 592 19 95

Bill H _____ S 132 Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Feb 28 ✓ C

Mar 02 ✓ C

_____ C

_____ C

Date Out Mar 03 ✓ C

S. Committee on Judiciary

Hearing Date(s) Jan 31 ✓ C

Feb 02 ✓ C

_____ C

_____ C

Feb 02 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

S. Rules

Conference Committee

Apr 12

Feb 13

Apr 04

SB 130 INTRODUCED BY TOEWS, ET AL.
INCLUDE MOBILE HOMES IN TAXABLE VALUATION OPTION FOR
ASSESSING COSTS OF STREET LIGHTING DISTRICTS

1/13 INTRODUCED
1/13 FIRST READING
1/13 REFERRED TO LOCAL GOVERNMENT
1/26 HEARING
2/08 TABLED IN COMMITTEE
2/23 MISSED TRANSMITTAL DEADLINE FOR 45TH DAY
DIED IN COMMITTEE

SB 131 INTRODUCED BY KEATING, ET AL.
REVISE DISTRIBUTION OF CUSTOM COMBINER'S SPECIAL PERMIT FEE
BY REQUEST OF LEGISLATIVE AUDIT COMMITTEE

1/13 INTRODUCED
1/13 FIRST READING
1/13 REFERRED TO FINANCE & CLAIMS
1/14 FISCAL NOTE REQUESTED
1/17 HEARING
1/18 FISCAL NOTE RECEIVED
1/18 FISCAL NOTE PRINTED
1/28 COMMITTEE REPORT—BILL NOT PASSED AS AMENDED
1/30 ADVERSE COMMITTEE REPORT ADOPTED 41 8

SB 132 INTRODUCED BY BISHOP, ET AL.
GENERALLY REVISE LAWS CONCERNING ESTATES AND TRUSTS

1/13 INTRODUCED
1/13 FIRST READING
1/13 REFERRED TO JUDICIARY
1/31 HEARING
2/03 REREFERRED TO RULES
2/13 HEARING
2/13 COMMITTEE REPORT—BILL PASSED AS AMENDED 50 0
2/15 2ND READING PASSED 49 1
2/16 3RD READING PASSED

TRANSMITTED TO HOUSE
2/20 FIRST READING
2/20 REFERRED TO JUDICIARY
2/28 HEARING
3/04 COMMITTEE REPORT—BILL CONCURRED 90 9
3/07 2ND READING CONCURRED 90 9
3/08 3RD READING CONCURRED

RETURNED TO SENATE
3/11 SIGNED BY PRESIDENT
3/11 SIGNED BY SPEAKER
3/13 TRANSMITTED TO GOVERNOR

RETURNED TO SENATE WITH GOVERNOR'S PROPOSED
AMENDMENTS
3/30 MOTION FAILED TO CONCUR WITH GOVERNOR'S
AMENDMENTS ON 2ND READING 17 32

HOUSE
3/31 2ND READING GOVERNOR'S AMENDMENTS
CONCURRED 50 43

SENATE
3/31 CONFERENCE COMMITTEE APPOINTED
4/03 REREFERRED TO RULES
4/04 HEARING

4/04	COMMITTEE REPORT—BILL PASSED		
4/05	2ND READING GOVERNOR'S AMENDMENTS		
	NOT CONCURRED	50	0
4/12	CONFERENCE COMMITTEE HEARING		
4/12	CONFERENCE COMMITTEE REPORT NO. 1		
4/13	MOTION FAILED TO ADOPT CONFERENCE COMMITTEE		
	REPORT NO. 1 ON 2ND READING	17	33
4/13	2ND READING CONFERENCE COMMITTEE REPORT		
	NO. 1 REJECTED	37	13
4/13	CONFERENCE COMMITTEE DISSOLVED		
	HOUSE		
4/06	CONFERENCE COMMITTEE APPOINTED		
4/12	CONFERENCE COMMITTEE REPORT NO. 1		
4/13	SIGNED BY PRESIDENT		
4/13	SIGNED BY SPEAKER		
4/17	TRANSMITTED TO GOVERNOR FOR FURTHER CONSIDERATION		
5/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 592		
	EFFECTIVE DATE: 10/01/95		

SB 133

INTRODUCED BY CHRISTIAENS, ET AL.

DECREASE FROM 12 TO 9 THE NUMBER OF JURORS IN CIVIL ACTIONS
UNLESS CERTAIN CONDITIONS ARE MET

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO JUDICIARY		
1/14	FISCAL NOTE REQUESTED		
1/18	FISCAL NOTE RECEIVED		
1/18	FISCAL NOTE PRINTED		
1/19	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED		
1/23	2ND READING PASSED AS AMENDED	25	24
1/24	3RD READING PASSED	27	23
	TRANSMITTED TO HOUSE		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
3/02	HEARING		
3/13	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 134

INTRODUCED BY KLAMPE

REQUIRE THAT MEDICAL PRACTITIONERS AND HEALTH CARE PROVIDERS
INFORM PATIENTS OF ANY FINANCIAL INTEREST IN A HEALTH CARE
SERVICE UPON A REFERRAL FOR TREATMENT, DIAGNOSIS, OR
PRESCRIPTION

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/08	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED AS AMENDED	49	0
2/10	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO HUMAN SERVICES & AGING		
3/08	HEARING		
	DIED IN COMMITTEE		

SENATE BILL NO. 132

INTRODUCED BY

*Brilley**Hallgren*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CONCERNING ESTATES AND TRUSTS; REMOVING THE STATUTE OF LIMITATIONS OF 1 YEAR AFTER LETTERS TESTAMENTARY OR OF ADMINISTRATION ARE ISSUED; REVISING THE TREATMENT OF CERTAIN TRANSFERS FOR PROBATE PURPOSES; CLARIFYING THE AUGMENTED ESTATE; CLARIFYING THE DISTRIBUTION OF LAPSED DEVISES; CLARIFYING THE APPLICATION OF SURVIVAL STATUTES; EXCLUDING JOINT ACCOUNTS FROM TRANSACTIONS INVOLVING BENEFICIARIES FOR WHOM STATUTORY SUBSTITUTES ARE PROVIDED IN CASE OF THE DEATH OF THE BENEFICIARY; CLARIFYING THE PASSING OF PROPERTY IN CASES IN WHICH A FUTURE INTEREST IS CREATED BY POWER OF APPOINTMENT; CLARIFYING THE APPLICATION AND EFFECT OF A DISCLAIMER; CLARIFYING THE APPLICATION OF HONORARY TRUSTS; CLARIFYING DISTRIBUTION BY REPRESENTATION; CLARIFYING TRANSFERS MADE IN CONTEMPLATION OF DEATH; CLARIFYING THE APPLICATION OF THE TERMS OF A MULTIPLE-PERSON ACCOUNT; CLARIFYING PROVISIONS GOVERNING REVOCABLE TRUSTS; CLARIFYING A TRUSTEE'S LIABILITY UNDER A REVOCABLE TRUST; AND AMENDING SECTIONS 27-2-404, 72-1-103, 72-2-116, 72-2-221, 72-2-222, 72-2-223, 72-2-224, 72-2-225, 72-2-227, 72-2-331, 72-2-332, 72-2-613, 72-2-712, 72-2-716, 72-2-717, 72-2-719, 72-2-721, 72-2-811, 72-2-813, 72-2-814, 72-2-1017, 72-3-102, 72-3-122, 72-3-131, 72-3-132, 72-3-317, 72-6-201, 72-6-213, 72-6-226, 72-16-301, 72-33-701, AND 72-34-513, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-2-404, MCA, is amended to read:

"27-2-404. When a party dies before action commenced. ~~(1)~~ If a person entitled to bring an action dies before the expiration of the time limited for the commencement ~~thereof~~ of the action and the cause of action survives, an action may be commenced by ~~his~~ the deceased's representatives after the expiration of that time and within 1 year from ~~his~~ death.

~~(2) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced~~

~~1 against his representatives after the expiration of that time and within 1 year after the issuing of letters
2 testamentary or of administration. If a person against whom a cause of action exists dies without the state,
3 the time which elapses between his death and the expiration of 1 year after the issuing within the state of
4 letters testamentary or letters of administration is not a part of the time limited for the commencement of
5 an action therefor against his executor or administrator."~~

6
7 **Section 2.** Section 72-1-103, MCA, is amended to read:

8 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent
9 chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise
10 requires, in chapters 1 through 5, the following definitions apply:

11 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an
12 individual authorized to make decisions concerning another's health care, and an individual authorized to
13 make decisions for another under a natural death act.

14 (2) "Application" means a written request to the clerk for an order of informal probate or
15 appointment under chapter 3, part 2.

16 (3) "Beneficiary", as it relates to:

17 (a) a trust beneficiary, includes a person who has any present or future interest, vested or
18 contingent, and also includes the owner of an interest by assignment or other transfer;

19 (b) a charitable trust, includes any person entitled to enforce the trust;

20 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

21 (i) an insurance or annuity policy, an account with POD designation, or a security registered in
22 beneficiary form (TOD);

23 (ii) a pension, profit-sharing, retirement, or similar benefit plan; or

24 (iii) any other nonprobate transfer at death; and

25 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a
26 trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a
27 power of appointment; and a person in whose favor a power of attorney or a power held in any individual,
28 fiduciary, or representative capacity is exercised.

29 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

30 (a) an insurance or annuity policy, an account with POD designation, or a security registered in

beneficiary form (TOD);

(b) a pension, profit-sharing, retirement, or similar benefit plan; or

(c) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative

1 is a distributee of the personal representative. For purposes of this provision, "testamentary trustee"
2 includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

3 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject
4 to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

5 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

6 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

7 (18) "Foreign personal representative" means a personal representative appointed by another
8 jurisdiction.

9 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested
10 persons.

11 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with
12 POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar
13 benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or
14 dispositive, appointive, or nominative instrument of any similar type.

15 (21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person
16 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

17 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and
18 the state, who are entitled under the statutes of intestate succession to the property of a decedent.

19 (23) "Incapacitated person" has the meaning provided in 72-5-101.

20 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by
21 the clerk of court for probate of a will or appointment of a personal representative.

22 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and
23 any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or
24 protected person. The term also includes persons having priority for appointment as personal representative
25 and other fiduciaries representing interested persons. The meaning as it relates to particular persons may
26 vary from time to time and must be determined according to the particular purposes of and matter involved
27 in any proceeding.

28 (26) "Issue" of a person means a descendant as defined in subsection (10).

29 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under
30 circumstances that entitle one or more to the whole of the property on the death of the other or others but

excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out

1 of production under such a title or lease; collateral trust certificate; transferable share; voting trust
2 certificate; in general, any interest or instrument commonly known as a security; any certificate of interest
3 or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant
4 or right to subscribe to or purchase any of the foregoing.

5 (44) "Settlement", in reference to a decedent's estate, includes the full process of administration,
6 distribution, and closing.

7 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

8 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of
9 Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

10 (47) "Successor personal representative" means a personal representative, other than a special
11 administrator, who is appointed to succeed a previously appointed personal representative.

12 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent
13 under the decedent's will or chapters 1 through 5.

14 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

15 (50) "Survive", ~~except for purposes of Title 72, chapter 6, part 3,~~ means that an individual has
16 neither predeceased an event, including the death of another individual, nor is considered to have
17 predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives",
18 "survived", "survivor", and "surviving".

19 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

20 (52) "Testator" includes an individual of either sex.

21 (53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and
22 however created. The term also includes a trust created or determined by judgment or decree under which
23 the trust is to be administered in the manner of an express trust. The term excludes other constructive
24 trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined
25 in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this
26 title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting
27 trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends,
28 interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under
29 which a person is nominee or escrowee for another.

30 (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or

confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 3. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate ~~is divided into decedent's descendants and the estate or part of the estate~~ is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(3) or (4), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 4. Section 72-2-221, MCA, is amended to read:

"72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222(2)(c), (2)(d), and (2)(e) and 72-2-227(1)(a), and ~~(1)(e)~~ and that part of the elective-share amount payable from the decedent's probate estate and ~~reclaimable estates~~ nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to others in the order of priority set forth in 72-2-227(2) and (3).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

~~(3)~~(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Section 5. Section 72-2-222, MCA, is amended to read:

"72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

~~(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim.~~

(i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

(ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

~~(iii)~~(iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having

1 a general power of appointment over property is considered to have a beneficial interest in the property.

2 (v) "Power" or "power of appointment" includes a power to designate the beneficiary of a
3 beneficiary designation.

4 ~~(iii)~~(vi) "Presently exercisable general power of appointment" means a power of appointment under
5 which, at the time in question, the decedent, ~~by an~~ whether or not the decedent then had the capacity to
6 exercise of the power, held a power could have created an to create a present or future interest, present
7 or future, in the decedent, of the decedent's creditors, the decedent's estate, or the creditors of the
8 decedent's estate and includes a power to revoke or invade the principal of a trust or other property
9 arrangement.

10 ~~(iv)~~(vii) "Probate estate" means property, whether real or personal, movable or immovable, wherever
11 situated, that would pass by intestate succession if the decedent died without a valid will.

12 (viii) "Property" includes values subject to a beneficiary designation.

13 ~~(v)~~(ix) "Right to income" includes a right to payments under ~~an~~ a commercial or private annuity,
14 an annuity trust, a unitrust, or a similar contractual arrangement.

15 (x) "Transfer", as it relates to a transfer by or of the decedent, includes:

16 (A) an exercise or release of a presently exercisable general power of appointment held by the
17 decedent;

18 (B) a lapse at death of a presently exercisable general power of appointment held by the decedent;
19 and

20 (C) an exercise, release, or lapse of a general power of appointment that the decedent created in
21 the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a
22 nonadverse party.

23 ~~(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of~~
24 ~~property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted~~
25 ~~value of any present or future interest then held by the surviving spouse and the commuted value of~~
26 ~~amounts payable to the surviving spouse after the decedent's death under any trust, life insurance~~
27 ~~settlement option, annuity contract, public or private pension, disability compensation, death benefit of~~
28 ~~retirement plan, or any similar arrangement, exclusive of the federal social security system.~~

29 (b)(i) As used in subsections subsection (2)(b)(iii)(A), and (2)(b)(iv), "transfer" includes an exercise
30 or release of a power of appointment but does not include a lapse of a power of appointment "termination";

1 (A) with respect to a right or interest in property, means that the right or interest terminated by the
2 terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

3 (B) with respect to a power over property, means that the power terminated by exercise, release,
4 lapse, or default or otherwise.

5 (ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power
6 terminated by exercise or release, but not by lapse or by default or otherwise.

7 (2) The augmented estate consists of the sum of:

8 (a) the value of the decedent's probate estate, reduced by funeral and administration expenses,
9 homestead allowance, family allowances ~~and exemptions~~, exempt property, and enforceable claims;

10 (b) the value of the decedent's ~~reclaimable estate~~ nonprobate transfers to other, which ~~is~~ are
11 composed of all property, whether real or personal, movable or immovable, wherever situated, not included
12 in the decedent's probate estate, of any of the following types:

13 (i) ~~property, to the extent the passing of the principal thereof to or for the benefit of any person,~~
14 ~~other than the decedent's surviving spouse, was subject to~~ of any of the following types that passed
15 outside probate at the decedent's death:

16 (A) property over which the decedent alone, immediately before death, held a presently exercisable
17 general power of appointment held by the decedent alone, if the decedent held that power immediately
18 before death or if and to the extent the decedent, while married to the surviving spouse and during the
19 2-year period preceding the decedent's death, released that power or exercised that power in favor of any
20 person other than the decedent or the decedent's estate, spouse, or surviving spouse; the amount included
21 is the value of the property subject to the power, to the extent that the property was passed at the
22 decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person
23 other than the decedent's estate or surviving spouse;

24 ~~iii~~ (B) the decedent's fractional interest in property, to the extent of the decedent's unilaterally
25 severable interest therein, held by the decedent and any other person, except the decedent's surviving
26 spouse, in joint tenancy with the right of survivorship; if the decedent held that interest immediately before
27 death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year
28 period preceding the decedent's death, transferred that interest to any person the amount included is the
29 value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of
30 survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

1 (C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership
2 registration with the right of survivorship; the amount included is the value of the decedent's ownership
3 interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the
4 benefit of any person other than the decedent's estate or surviving spouse; or

5 ~~(((D))~~ proceeds of insurance, including accidental death benefits, on the life of the decedent
6 ~~payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance~~
7 ~~policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was~~
8 ~~subject to~~ immediately before death or if and to the extent that the decedent alone and immediately before
9 death held a presently exercisable general power of appointment held by the decedent alone immediately
10 ~~before death or if and to the extent the decedent, while married to the surviving spouse and during the~~
11 ~~2-year period preceding the decedent's death, transferred that policy to any person other than the~~
12 ~~decedent's surviving spouse over the policy or its proceeds; and the amount included is the value of the~~
13 proceeds, to the extent that they were payable at the decedent's death to or for the benefit of any person
14 other than the decedent's estate or surviving spouse;

15 ~~(((ii))~~ property transferred in any of the following forms by the decedent to any person other than
16 ~~a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the~~
17 ~~benefit of any person other than the surviving spouse, if the transfer is of any of the following types:~~

18 (A) any irrevocable transfer to the extent that in which the decedent retained at the time of or
19 ~~during the 2-year period preceding death the right to the possession or enjoyment of, or right to the income~~
20 from, the property if and to the extent that the decedent's right terminated at or continued beyond the
21 decedent's death; the amount included is the value of the fraction of the property to which the decedent's
22 right related, to the extent that the fraction of the property was passed outside probate to or for the benefit
23 of any person other than the decedent's estate or surviving spouse; or

24 (B) any transfer to the extent that at the time of or during the 2-year period preceding the
25 ~~decedent's death, in which the decedent created a power over the income or principal was subject to a~~
26 ~~power of the transferred property, exercisable by the decedent alone or in conjunction with any other~~
27 ~~person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, or~~
28 ~~the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the~~
29 property subject to the power, to the extent that the power was exercisable at the decedent's death to or
30 for the benefit of any person other than the decedent's surviving spouse or to the extent that the property

subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise,
to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(iii) property that passed during marriage and during the 2-year period preceding the decedent's
death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) any property that passed as a result of the termination of a right or interest in, or power over,
property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B),
(2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the
amount included is the value of the property that would have been included under these subsections,
except that that property is valued at the time that the right, interest, or power terminated, and is included
only to the extent that the property passed upon termination to or for the benefit of any person other than
the decedent or the decedent's estate, spouse, or surviving spouse;

(B) any transfer of or relating to an insurance policy on the life of the decedent if the proceeds
would have been included in the augmented estate under subsection (2)(b)(i)(D) had the transfer not
occurred; the amount included is the value of the insurance proceeds to the extent that the proceeds were
payable at the decedent's death to or for the benefit of any person other than the decedent's estate or
surviving spouse; or

(C) any transfer of property, to the extent the decedent's contribution to it, as a percentage of the
whole, was made during the 2-year period preceding the decedent's death, by which the property is held
at the time of or during the 2-year period preceding the decedent's death by the decedent and another,
other than the decedent's surviving spouse, with right of survivorship; or

(D) any transfer not otherwise included in the augmented estate, made to or for the benefit of a
donee during the 2-year period preceding the decedent's death person other than the decedent's surviving
spouse; the amount included is the value of the transferred property to the extent that the aggregate
transfers to any one donee in either of the 2 years ~~exceed~~ exceeded \$10,000;

(c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are
composed of all property that passed outside probate at the decedent's death from the decedent to which
the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance,
exempt property, family allowance, testate succession, or intestate succession, including the proceeds of
insurance, including: accidental death benefits, on the life of the decedent and including benefits payable
under a retirement plan in which the decedent was a participant, exclusive of

1 (i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship,
2 to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

3 (ii) the decedent's ownership interest in property or accounts held in co-ownership registration with
4 the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse
5 as surviving co-owner; and

6 (iii) all other property that would have been included in the augmented estate under subsection
7 (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse,
8 surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding
9 property passing to the surviving spouse under the federal social security system; and

10 (d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the
11 value of:

12 (i) property that was owned by the decedent's surviving spouse at the decedent's death, reduced
13 by enforceable claims against that property or that spouse, plus the value of amounts including:

14 (A) the surviving spouse's fractional interest in property held in joint tenancy with the right of
15 survivorship;

16 (B) the surviving spouse's ownership interest in property or accounts held in co-ownership
17 registration with the right of survivorship; and

18 (C) property that passed to the surviving spouse by reason of the decedent's death, but not
19 including the spouse's right to homestead allowance, family allowance, exempt property, or payments
20 under the federal social security system; and

21 (ii) property that would have been includable included in the surviving spouse's reclaimable estate
22 nonprobate transfers to others, other than the spouse's fractional and ownership interests included in
23 subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse predeceased been the decedent. However, amounts
24 Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the
25 fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and
26 (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before
27 the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.
28 For purposes of this subsection (2)(d)(ii), proceeds of insurance that would have been includable included
29 in the surviving spouse's reclaimable estate nonprobate transfers to others under subsection (2)(b)(iii)
30 (2)(b)(i)(D) are not valued as if the surviving spouse were deceased. The value of property included under

1 this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property
2 and is reduced by enforceable claims against the surviving spouse.

3 ~~(3) Any transfer or exercise or release of a power of appointment~~ The value of any property is
4 excluded from the decedent's reclaimable estate ~~nonprobate transfers to others:~~

5 (a) to the extent the decedent received adequate and full consideration in money or money's worth
6 for the a transfer, exercise, or release of the property; or

7 (b) if irrevocably made the property was transferred with the written consent or joinder of, or if
8 the transfer was consented to in writing by, the surviving spouse.

9 ~~(4) Property is valued as of the decedent's death, but an irrevocable transfer of property during~~
10 ~~the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under~~
11 ~~subsections (2)(b)(i), (2)(b)(iii), and (2)(b)(iv) is valued as of the time of the transfer. If the terms of more~~
12 ~~than one~~ The value of property includes the commuted value of any present or future interest and the
13 commuted value of amounts payable under any trust, life insurance settlement option, annuity contract,
14 public or private pension, disability compensation, death benefit or retirement plan, or any similar
15 arrangement, exclusive of the federal social security system.

16 (5) In case of overlapping application to the same property of the provisions of subsection (2)(b)
17 apply, the property is included in the augmented estate under the provision that yields yielding the highest
18 value, but under any one, but only one, of the overlapping provisions if they all yield the same value. For
19 purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release
20 of a power of appointment.

21 ~~(5) (a) Although under this section a payment, item of property, or other benefit is included in the~~
22 ~~decedent's reclaimable estate, a payer or other third party is not liable for having made a payment or~~
23 ~~transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or~~
24 ~~for having taken any other action in good faith reliance on the validity of a governing instrument, upon~~
25 ~~request and satisfactory proof of the decedent's death, before the payer or other third party received~~
26 ~~written notice from the surviving spouse or spouse's representative of an intention to file a petition for the~~
27 ~~elective share or that a petition for the elective share has been filed. A payer or other third party is liable~~
28 ~~for payments made or other actions taken after the payer or other third party received written notice of an~~
29 ~~intention to file a petition for the elective share or that a petition for the elective share has been filed.~~

30 ~~(b) The written notice of intention to file a petition for the elective share or that a petition for the~~

~~elective share has been filed must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.~~

~~(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.~~

~~(6) (a) A person who purchases property from a recipient for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this part to return the payment, item of property, or benefit nor liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in 72-2-227.~~

~~(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled to it were that section or part of that section not preempted."~~

1 **Section 6.** Section 72-2-223, MCA, is amended to read:

2 **"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse. (1)**

3 The right of election may be exercised only by a surviving spouse who is living when the petition for the
4 elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse
5 personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator,
6 guardian, or agent under the authority of a power of attorney.

7 (2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the
8 court shall set aside that portion of the elective-share and supplemental elective-share amounts due from
9 the decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to
10 others under 72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of
11 the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by
12 an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an
13 incapacitated person. The trustee shall administer the trust in accordance with the following terms and such
14 additional terms as the court determines appropriate:

15 (a) Expenditures of income and principal may be made in the manner, when, and to the extent that
16 the trustee determines suitable and proper for the surviving spouse's support, without court order but with
17 regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or
18 other forms of assistance from any state or federal government or governmental agency for which the
19 surviving spouse qualifies on the basis of need.

20 (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on
21 behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains
22 capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership
23 of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse
24 declaring the termination.

25 (c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in
26 the following order:

27 (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the
28 elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

29 (ii) to that predeceased spouse's heirs under 72-2-721."
30

1 **Section 7.** Section 72-2-224, MCA, is amended to read:

2 **"72-2-224. Waiver of right to elect and of other rights.** (1) The right of election of a surviving
3 spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family
4 allowance or any of them may be waived, wholly or partially, before or after marriage, by a written
5 contract, agreement, or waiver signed by the surviving spouse. The written contract, agreement, or waiver
6 is enforceable without consideration.

7 (2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

8 (a) the surviving spouse did not execute the waiver voluntarily; or

9 (b) the waiver was unconscionable when it was executed and, before execution of the waiver, the
10 surviving spouse:

11 (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the
12 decedent;

13 (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or
14 financial obligations of the decedent beyond the disclosure provided; and

15 (iii) did not have or reasonably could not have had an adequate knowledge of the property or
16 financial obligations of the decedent.

17 (3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

18 (4) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the
19 property or estate of a present or prospective spouse or a complete property settlement entered into after
20 or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance,
21 exempt property, and family allowance by each spouse in the property of the other and a renunciation by
22 each of all benefits that would otherwise pass to that spouse from the other by intestate succession or by
23 virtue of any will executed before the waiver or property settlement."
24

25 **NEW SECTION. Section 8. Personal liability of recipients.** (1) Only original recipients of the
26 decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate
27 transfers to others, to the extent the donees have the property or its proceeds, are liable to make a
28 proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental
29 elective-share amount. A person liable to make contribution may choose to give up the proportional part
30 of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the

1 person is liable.

2 (2) If any section or part of any section of this part is preempted by federal law with respect to a
3 payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to
4 others, a person who, not for value, receives the payment, item of property, or other benefit is obligated
5 to return that payment, item of property, or benefit or is personally liable for the amount of that payment
6 or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have
7 been entitled to it were that section or part of that section not preempted.

8
9 **NEW SECTION. Section 9. Protection of payors and other third parties.** (1) Although under
10 72-2-222 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers
11 to others, a payor or other third party is not liable for having made a payment or transferred an item of
12 property or other benefit to a beneficiary designated in a governing instrument or for having taken any other
13 action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof
14 of the decedent's death, before the payor or other third party received written notice from the surviving
15 spouse or spouse's representative of an intention to file a petition for the elective share or that a petition
16 for the elective share has been filed. A payor or other third party is liable for payments made or other
17 actions taken after the payor or other third party received written notice of an intention to file a petition
18 for the elective share or that a petition for the elective share has been filed.

19 (2) The written notice of intention to file a petition for the elective share or that a petition for the
20 elective share has been filed must be mailed to the payor's or other third party's main office or home by
21 certified mail, return receipt requested, or served upon the payor or other third party in the same manner
22 as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective
23 share or that a petition for the elective share has been filed, a payor or other third party may pay any
24 amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction
25 of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced,
26 to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the
27 county of the decedent's residence. The court shall hold the funds or item of property and, upon its
28 determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no
29 petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an
30 elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated

1 beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third
2 party from all claims for the value of amounts paid to or items of property transferred to or deposited with
3 the court.

4 (3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the
5 court may order that all or part of the property be paid to the beneficiary in an amount and subject to
6 conditions consistent with this section.

7
8 **Section 10.** Section 72-2-225, MCA, is amended to read:

9 **"72-2-225. Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the
10 election must be made by filing in the court and mailing or delivering to the personal representative, if any,
11 a petition for the elective share within 9 months after the date of the decedent's death or within 6 months
12 after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give
13 notice of the time and place set for hearing to persons interested in the estate and to the distributees and
14 recipients of portions of the augmented estate whose interests will be adversely affected by the taking of
15 the elective share. Except as provided in subsection (2), the decedent's ~~reclaimable estate,~~ nonprobate
16 transfers to others described in 72-2-222(2)(b), is not included within the augmented estate for the purpose
17 of computing the elective share if the petition is filed more than 9 months after the decedent's death.

18 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for
19 an extension of time for making an election. If, within 9 months after the decedent's death, the spouse
20 gives notice of the petition to all persons interested in the decedent's ~~reclaimable estate,~~ nonprobate
21 transfers to others the court for cause shown by the surviving spouse may extend the time for election.
22 If the court grants the spouse's petition for an extension, the decedent's ~~reclaimable estate,~~ nonprobate
23 transfers to others described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose
24 of computing the elective-share and supplemental elective-share amounts if the spouse makes an election
25 by filing in the court and mailing or delivering to the personal representative, if any, a petition for the
26 elective share within the time allowed by the extension.

27 (3) The surviving spouse may withdraw a demand for an elective share at any time before entry
28 of a final determination by the court.

29 (4) After notice and hearing, the court shall determine the elective-share and supplemental
30 elective-share amounts and shall order its payment from the assets of the augmented estate or by

contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under 72-2-227 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 11. Section 72-2-227, MCA, is amended to read:

"72-2-227. ~~Charging spouse with owned assets and gifts received — liability of others for balance of~~ Sources from which elective share payable. (1) In the proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to others:

(a) amounts included in the augmented estate under 72-2-222(2)(a) that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under 72-2-222(2)(c);

(c) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the decedent were married to each other.

(2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and ~~that portion of in the decedent's reclaimable estate~~ nonprobate transfers to others, other than amounts ~~irrevocably transferred within 2 years before the decedent's death~~ included under 72-2-222(2)(b)(iii)(A) or 72-2-222(2)(b)(iii)(C), are applied first to satisfy the unsatisfied balance of the

1 elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that
2 portion of the decedent's ~~reclaimable estate~~ nonprobate transfers to others are applied so that liability for
3 the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is
4 equitably apportioned among the recipients of the decedent's probate estate and of that portion of the
5 decedent's ~~reclaimable estate~~ nonprobate transfers to others in proportion to the value of their interests
6 therein.

7 (3) If, after the application of subsections (1) and (2), the elective-share or supplemental
8 elective-share amount is not fully satisfied, the remaining portion of the decedent's ~~reclaimable estate~~
9 nonprobate transfers to others is applied so that liability for the unsatisfied balance of the elective-share
10 or supplemental elective-share amount is equitably apportioned among the recipients of that remaining
11 portion of the decedent's ~~reclaimable estate~~ nonprobate transfers to others in proportion to the value of
12 their interests therein.

13 ~~(4) Only original recipients of the reclaimable estate described in 72-2-222(2)(b) and the donees~~
14 ~~of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds are~~
15 ~~liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or~~
16 ~~supplemental elective share amount. A person liable to contribution may choose to give up the proportional~~
17 ~~part of the reclaimable estate or to pay the value of the amount for which the person is liable."~~

18
19 **Section 12.** Section 72-2-331, MCA, is amended to read:

20 **"72-2-331. Entitlement of spouse -- premarital will.** (1) If a testator's surviving spouse married the
21 testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share,
22 no less than the value of the share of the estate the spouse would have received if the testator had died
23 intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator
24 who was born before the testator married the surviving spouse and who is not a child of the surviving
25 spouse nor devised to the descendant of such a child or passes under 72-2-613 or 72-2-614 to such a child
26 or to a descendant of such a child, unless:

27 (a) it appears from the will or other evidence that the will was made in contemplation of the
28 testator's marriage to the surviving spouse;

29 (b) the will expresses the intention that it is to be effective notwithstanding any subsequent
30 marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate as provided in 72-3-901."

Section 13. Section 72-2-332, MCA, is amended to read:

"72-2-332. Omitted children. (1) Except as provided in subsection (2), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who

1 were living when the will was executed abate ratably. In abating the devises of the then-living children, the
2 court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the
3 testator.

4 (2) Subsections (1)(a), and (1)(b), ~~and (3)~~ do not apply if:

5 (a) it appears from the will that the omission was intentional; or

6 (b) the testator provided for the omitted after-born or after-adopted child by transfer outside the
7 will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's
8 statements or is reasonably inferred from the amount of the transfer or other evidence.

9 (3) ~~Except as provided in subsection (2), if~~ If at the time of execution of the will the testator fails
10 to provide in the testator's will for a living child solely because the testator believes the child to be dead,
11 the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

12 (4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided
13 in 72-3-901."

14
15 **Section 14.** Section 72-2-613, MCA, is amended to read:

16 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following
17 definitions apply:

18 (a) "Alternative devise" means a devise that is expressly created by the will and that under the
19 terms of the will may take effect instead of another devise on the happening of one or more events,
20 including survival of the testator or failure to survive the testator, whether an event is expressed in
21 condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative
22 devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure,
23 the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

24 (b) "Class member" includes an individual who fails to survive the testator but who would have
25 taken under a devise in the form of a class gift had the individual survived the testator.

26 (c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of
27 a power of appointment.

28 (d) "Devisee" includes:

29 (i) a class member if the devise is in the form of a class gift;

30 (ii) an individual or class member who was deceased at the time the testator executed the testator's

1 will as well as an individual or class member who was then living but who failed to survive the testator;
2 and

3 (iii) an appointee under a power of appointment exercised by the testator's will.

4 (e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the
5 donor of a power of appointment but not a child of the testator or donor.

6 (f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither
7 predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

8 (g) "Testator" includes the donee of a power of appointment if the power is exercised in the
9 testator's will.

10 (2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent,
11 or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will,
12 the following apply:

13 (a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the
14 deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving
15 descendants. They take by representation the property to which the devisee would have been entitled had
16 the devisee survived the testator.

17 (b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than
18 a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or
19 a class described by language of similar import, a substitute gift is created in the surviving descendants of
20 any deceased devisee ~~or devisee's surviving descendants~~. The property to which the devisees would have
21 been entitled had all of them survived the testator passes to the surviving devisees and the surviving
22 descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would
23 have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving
24 descendants who are substituted for the deceased devisee take by representation the share to which the
25 deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes
26 of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and
27 left one or more surviving descendants.

28 (c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the
29 individual survives me" or in a devise to "my surviving children", are not, in the absence of additional
30 evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 15. Section 72-2-712, MCA, is amended to read:

"72-2-712. Requirement of survival by one hundred twenty hours. (1) For the purposes of chapters 1 through 5, ~~except for purposes of Title 72, chapter 6, part 3, and~~ except as provided in subsection (4),

an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4) ~~and except for a security registered in beneficiary form (TOD) under Title 72, chapter 6, part 3,~~ for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) ~~This section does~~ Survival by 120 hours is not apply required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of ~~this section~~ a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must

1 be established by clear and convincing evidence.

2 (5) (a) A payor or other third party is not liable for having made a payment or transferred an item
3 of property or any other benefit to a beneficiary designated in a governing instrument who, under this
4 section, is not entitled to the payment or item of property, or for having taken any other action in good faith
5 reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the
6 payor or other third party received written notice of a claimed lack of entitlement under this section. A
7 payor or other third party is liable for a payment made or other action taken after the payor or other third
8 party received written notice of a claimed lack of entitlement under this section.

9 (b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the
10 payor's or other third party's main office or home by certified mail, return receipt requested, or served upon
11 the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written
12 notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount
13 owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the
14 probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or
15 with the court having jurisdiction of probate proceedings relating to decedents' estates located in the
16 county of the decedent's residence. The court shall hold the funds or item of property and, upon its
17 determination under this section, shall order disbursement in accordance with the determination. Payments,
18 transfers, or deposits made to or with the court discharge the payor or other third party from all claims for
19 the value of amounts paid to or items of property transferred to or deposited with the court.

20 (6) (a) A person who purchases property for value and without notice or who receives a payment
21 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated
22 under this section to return the payment, item of property, or benefit nor liable under this section for the
23 amount of the payment or the value of the item of property or benefit. However, a person who, not for
24 value, receives a payment, item of property, or other benefit to which the person is not entitled under this
25 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount
26 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this
27 section.

28 (b) If this section or any part of this section is preempted by federal law with respect to a payment,
29 an item of property, or any other benefit covered by this section, a person who, not for value, receives the
30 payment, item of property, or other benefit to which the person is not entitled under this section is

obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 16. Section 72-2-716, MCA, is amended to read:

"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death registration -- deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a

1 class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the
2 beneficiary's surviving descendants. They take by representation the property to which the beneficiary
3 would have been entitled had the beneficiary survived the decedent.

4 (b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class
5 gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of
6 kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created
7 in the surviving descendants of any deceased beneficiary ~~or beneficiary's surviving descendants~~. The
8 property to which the beneficiaries would have been entitled had all of them survived the decedent passes
9 to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving
10 beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased
11 beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted
12 for the deceased beneficiary take by representation the share to which the deceased beneficiary would have
13 been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b),
14 "deceased beneficiary" means a class member who failed to survive the decedent and left one or more
15 surviving descendants.

16 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to
17 an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are
18 not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application
19 of this section.

20 (d) If a governing instrument creates an alternative beneficiary designation with respect to a
21 beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute
22 gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of
23 the alternative beneficiary designation is entitled to take.

24 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more
25 than one beneficiary designation and the beneficiary designations are alternative beneficiary designations,
26 one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

27 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

28 (b) If there is a younger-generation beneficiary designation, the property passes under the
29 younger-generation substitute gift and not under the primary substitute gift.

30 (c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated

1 under this section to return the payment, item of property, or benefit nor liable under this section for the
2 amount of the payment or the value of the item of property or benefit. However, a person who, not for
3 value, receives a payment, item of property, or other benefit to which the person is not entitled under this
4 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount
5 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this
6 section.

7 (b) If this section or any part of this section is preempted by federal law with respect to a payment,
8 an item of property, or any other benefit covered by this section, a person who, not for value, receives the
9 payment, item of property, or other benefit to which the person is not entitled under this section is
10 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the
11 payment or the value of the item of property or benefit, to the person who would have been entitled to it
12 were this section or part of this section not preempted."

13
14 **Section 17.** Section 72-2-717, MCA, is amended to read:

15 **"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.**

16 (1) As used in this section, the following definitions apply:

17 (a) "Alternative future interest" means an expressly created future interest that may take effect
18 in possession or enjoyment instead of another future interest on the happening of one or more events,
19 including survival of an event or failure to survive an event, whether an event is expressed in
20 condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create
21 an alternative future interest with respect to a future interest created in a nonresiduary devise in the will,
22 whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary
23 clause.

24 (b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the
25 future interest is in the form of a class gift.

26 (c) "Class member" includes an individual who fails to survive the distribution date but who would
27 have taken under a future interest in the form of a class gift had the individual survived the distribution
28 date.

29 (d) "Distribution date" with respect to a future interest means the time when the future interest
30 is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end

1 of a calendar day, but may occur at a time during the course of a day.

2 (e) "Future interest" includes an alternative future interest and a future interest in the form of a
3 class gift.

4 (f) "Future interest under the terms of a trust" means a future interest that was created by a
5 transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing
6 trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or
7 creates a trust.

8 (g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who
9 neither predeceased the distribution date nor is considered to have predeceased the distribution date under
10 72-2-712.

11 (2) A future interest under the terms of a trust is contingent on the beneficiary surviving the
12 distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the
13 distribution date, the following provisions apply:

14 (a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift
15 and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's
16 surviving descendants. They take by representation the property to which the beneficiary would have been
17 entitled had the beneficiary survived the distribution date.

18 (b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other
19 than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or
20 "family" or a class described by language of similar import, a substitute gift is created in the surviving
21 descendants of any deceased beneficiary ~~or beneficiary's surviving descendants~~. The property to which the
22 beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving
23 beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes
24 the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries
25 survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for
26 the deceased beneficiary take by representation the share to which the deceased beneficiary would have
27 been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection
28 (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one
29 or more surviving descendants.

30 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in

1 the absence of additional evidence, a sufficient indication of an intent contrary to the application of this
2 section. Words of survivorship include words of survivorship that relate to the distribution date or to an
3 earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent,
4 condition-subsequent, or any other form.

5 (d) If a governing instrument creates an alternative future interest with respect to a future interest
6 for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the
7 alternative future interest only if an expressly designated beneficiary of the alternative future interest is
8 entitled to take in possession or enjoyment.

9 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more
10 than one future interest and the future interests are alternative future interests, one to the other, the
11 determination of which of the substitute gifts takes effect is resolved as follows:

12 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

13 (b) If there is a younger-generation future interest, the property passes under the
14 younger-generation substitute gift and not under the primary substitute gift.

15 (c) As used in this subsection (3), the following definitions apply:

16 (i) "Primary future interest" means the future interest that would have taken effect had all the
17 deceased beneficiaries of the alternative future interests who left surviving descendants survived the
18 distribution date.

19 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary future
20 interest.

21 (iii) "Younger-generation future interest" means a future interest that:

22 (A) is to a descendant of a beneficiary of the primary future interest;

23 (B) is an alternative future interest with respect to the primary future interest;

24 (C) is a future interest for which a substitute gift is created; and

25 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants
26 survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

27 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the
28 younger-generation future interest.

29 (4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there
30 is no surviving taker, the property passes in the following order:

1 (a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the
2 transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this
3 section, the residuary clause is treated as creating a future interest under the terms of a trust.

4 (b) if no taker is produced by the application of subsection (4)(a), the property passes to the
5 transferor's heirs under 72-2-721.

6 (5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future
7 interest was created by the exercise of a power of appointment:

8 (a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as
9 creating a future interest under the terms of a trust; and

10 (b) if no taker is produced by the application of subsection (5)(a), the property passes as provided
11 in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a
12 nongeneral power and means the donee if the power was a general power."

13
14 **Section 18.** Section 72-2-719, MCA, is amended to read:

15 **"72-2-719. Representation -- per capita at each generation -- per stirpes.** (1) As used in this
16 section, the following definitions apply:

17 (a) "Deceased child" or "deceased descendant" means a child or a descendant who either
18 predeceased the distribution date or is considered to have predeceased the distribution date under
19 72-2-712.

20 (b) "Distribution date", with respect to an interest, means the time when the interest is to take
21 effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a
22 calendar day but may occur at a time during the course of a day.

23 (c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child,
24 or a descendant who neither predeceased the distribution date nor is considered to have predeceased the
25 distribution date under 72-2-712.

26 (2) (a) If a governing instrument calls for property to be distributed "per capita at each generation",
27 the property is divided into as many equal shares as there are:

28 (i) surviving descendants in the generation nearest to the designated ancestor that contains one or
29 more surviving descendants; and

30 (ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) ~~If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per stirpes",~~ the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

~~(4)(5)~~ For the purposes of subsections (2) ~~and (3)~~ through (4), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share."

Section 19. Section 72-2-721, MCA, is amended to read:

"72-2-721. ~~Future interests~~ Interests in "heirs" and like. If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state ~~under 72-2-115~~, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated

individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual."

Section 20. Section 72-2-811, MCA, is amended to read:

"72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument

1 or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after
2 the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than
3 9 months after the event determining that the taker of the property or interest is finally ascertained and the
4 taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of
5 the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the
6 existence of the interest. The effective date of a revocable instrument or contract is the date on which the
7 maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable
8 ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed
9 by certified mail, return receipt requested, to the person who has legal title to or possession of the interest
10 disclaimed.

11 (c) A surviving joint tenant may disclaim as a separate interest any property or interest in property
12 devolving to the joint tenant by right of survivorship. A surviving joint tenant may disclaim the entire
13 interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint
14 tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in
15 creating the joint tenancy, and the survivor has not accepted a benefit under it.

16 (d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be
17 recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed
18 is located.

19 (3) The disclaimer must:

20 (a) describe the property or interest disclaimed;

21 (b) declare the disclaimer and extent of the disclaimer; and

22 (c) be signed by the disclaimant.

23 (4) The following are the effects of a disclaimer:

24 (a) If property or an interest in property devolves to a disclaimant under a testamentary instrument,
25 under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and
26 the decedent has not provided for another disposition of that interest, should it be disclaimed, or of
27 disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had
28 predeceased the decedent, but if by law or under the testamentary instrument the descendants of the
29 disclaimant would ~~take the disclaimant's share~~ in the disclaimed interest by representation or otherwise
30 were the disclaimant to predecease the decedent, the disclaimed interest passes by representation, or

1 passes as directed by the governing instrument, to the descendants of the disclaimant who survive the
2 decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate
3 or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates
4 back for all purposes to the date of the death of the decedent.

5 (b) If property or an interest in property devolves to a disclaimant under a nontestamentary
6 instrument or contract and the instrument or contract does not provide for another disposition of that
7 interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest
8 devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by
9 law or under the nontestamentary instrument or contract the descendants of the disclaimant would take
10 ~~the disclaimant's share in the disclaimed interest~~ by representation or otherwise were the disclaimant to
11 predecease the effective date of the instrument, the disclaimed interest passes by representation, or passes
12 as directed by the governing instrument, to the descendants of the disclaimant who survive the effective
13 date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes
14 effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the
15 disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed
16 interest.

17 (c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or
18 person waiving and on all persons claiming through or under either of them.

19 (5) The right to disclaim property or an interest in the property is barred by:

20 (a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a
21 contract therefor;

22 (b) a written waiver of the right to disclaim;

23 (c) an acceptance of the property or interest or benefit under it; or

24 (d) a sale of the property or interest under judicial sale made before the disclaimer is made.

25 (6) This section does not abridge the right of a person to waive, release, disclaim, or renounce
26 property or an interest in property under any other statute.

27 (7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the
28 time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not
29 become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after
30 October 1, 1993."

1 **Section 21.** Section 72-2-813, MCA, is amended to read:

2 **"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance,**
3 **and beneficiary designations.** (1) For purposes of this section, the following definitions apply:

4 (a) "Disposition or appointment of property" includes a transfer of an item of property or any other
5 benefit to a beneficiary designated in a governing instrument.

6 (b) "Governing instrument" means a governing instrument executed by the decedent.

7 (c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one
8 under which the decedent, at the time of or immediately before death, was alone empowered, by law or
9 under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent
10 was then empowered to designate the decedent in place of the decedent's killer and whether or not the
11 decedent then had capacity to exercise the power.

12 (2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this
13 chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted
14 spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent
15 died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

16 (3) The felonious and intentional killing of the decedent:

17 (a) revokes any revocable:

18 (i) disposition or appointment of property made by the decedent to the killer in a governing
19 instrument;

20 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment
21 on the killer; and

22 (iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve
23 in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent;
24 and

25 (b) severs the interests of the decedent and killer in property held by them at the time of the killing
26 as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into
27 tenancies in common.

28 (4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired
29 for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing
30 declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and

1 location of the property, which records are relied upon, in the ordinary course of transactions involving such
2 property, as evidence of ownership.

3 (5) Provisions of a governing instrument ~~that are not revoked by this section~~ are given effect as
4 if the killer disclaimed all ~~revoked~~ provisions revoked by this section or, in the case of a revoked nomination
5 in a fiduciary or representative capacity, as if the killer predeceased the decedent.

6 (6) A wrongful acquisition of property or interest by a killer not covered by this section must be
7 treated in accordance with the principle that a killer cannot profit from the killer's wrong.

8 (7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal
9 accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted
10 individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court,
11 upon the petition of an interested person, shall determine whether, under the preponderance of evidence
12 standard, the individual would be found criminally accountable for the felonious and intentional killing of
13 the decedent. If the court determines that under that standard the individual would be found criminally
14 accountable for the felonious and intentional killing of the decedent, the determination conclusively
15 establishes that individual as the decedent's killer for purposes of this section.

16 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item
17 of property or any other benefit to a beneficiary designated in a governing instrument affected by an
18 intentional and felonious killing, or for having taken any other action in good faith reliance on the validity
19 of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor
20 or other third party received written notice of a claimed forfeiture or revocation under this section. A payor
21 or other third party is liable for a payment made or other action taken after the payor or other third party
22 received written notice of a claimed forfeiture or revocation under this section.

23 (b) Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to
24 the payor's or other third party's main office or home by certified mail, return receipt requested, or served
25 upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of
26 written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay
27 any amount owed or transfer or deposit any item of property held by it to or with the court having
28 jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been
29 commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates
30 located in the county of the decedent's residence. The court shall hold the funds or item of property and,

1 upon its determination under this section, shall order disbursement in accordance with the determination.
2 Payments, transfers, or deposits made to or with the court discharge the payor or other third party from
3 all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

4 (9) (a) A person who purchases property for value and without notice or who receives a payment
5 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated
6 under this section to return the payment, item of property, or benefit nor liable under this section for the
7 amount of the payment or the value of the item of property or benefit. However, a person who, not for
8 value, receives a payment, item of property, or other benefit to which the person is not entitled under this
9 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount
10 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this
11 section.

12 (b) If this section or any part of this section is preempted by federal law with respect to a payment,
13 an item of property, or any other benefit covered by this section, a person who, not for value, receives the
14 payment, item of property, or other benefit to which the person is not entitled under this section is
15 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the
16 payment or the value of the item of property or benefit, to the person who would have been entitled to it
17 were this section or part of this section not preempted.

18 (10) For the purposes of this section, a felonious and intentional killing includes a deliberate
19 homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."
20

21 **Section 22.** Section 72-2-814, MCA, is amended to read:

22 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**
23 **changes of circumstances.** (1) As used in this section, the following definitions apply:

24 (a) "Disposition or appointment of property" includes a transfer of an item of property or any other
25 benefit to a beneficiary designated in a governing instrument.

26 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity
27 of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A
28 decree of separation that does not terminate the status of husband and wife is not a divorce for purposes
29 of this section.

30 (c) "Divorced individual" includes an individual whose marriage has been annulled.

1 (d) "Governing instrument" means a governing instrument executed by the divorced individual
2 before the divorce or annulment of the individual's marriage to the individual's former spouse.

3 (e) "Relative of the divorced individual's former spouse" means an individual who is related to the
4 divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment,
5 is not related to the divorced individual by blood, adoption, or affinity.

6 (f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one
7 under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by
8 law or under the governing instrument, to cancel the designation in favor of the individual's former spouse
9 or former spouse's relative, whether or not the divorced individual was then empowered to designate the
10 divorced individual in place of the individual's former spouse or in place of the former spouse's relative and
11 whether or not the divorced individual then had the capacity to exercise the power.

12 (2) Except as provided by the express terms of a governing instrument, a court order, or a contract
13 relating to the division of the marital estate made between the divorced individuals before or after the
14 marriage, divorce, or annulment, the divorce or annulment of a marriage:

15 (a) revokes any revocable:

16 (i) disposition or appointment of property made by a divorced individual to the individual's former
17 spouse in a governing instrument and any disposition or appointment created by law or in a governing
18 instrument to a relative of the divorced individual's former spouse;

19 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment
20 on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

21 (iii) nomination in a governing instrument that nominates a divorced individual's former spouse or
22 a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity,
23 including a personal representative, executor, trustee, conservator, agent, or guardian; and

24 (b) severs the interests of the former spouses in property held by them at the time of the divorce
25 or annulment as joint tenants with the right of survivorship and transforms the interests of the former
26 spouses into tenancies in common.

27 (3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired
28 for value and in good faith reliance on an apparent title by survivorship in the survivor of the former
29 spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records
30 appropriate to the kind and location of the property, which records are relied upon, in the ordinary course

1 of transactions involving such property, as evidence of ownership.

2 (4) Provisions of a governing instrument ~~that are not revoked by this section~~ are given effect as
3 if the former spouse and relatives of the former spouse disclaimed ~~the revoked~~ all provisions revoked by
4 this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former
5 spouse and relatives of the former spouse died immediately before the divorce or annulment.

6 (5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to
7 the former spouse or by a nullification of the divorce or annulment.

8 (6) No change of circumstances other than as described in this section and in 72-2-813 effects a
9 revocation.

10 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item
11 of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,
12 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the
13 governing instrument, before the payor or other third party received written notice of the divorce,
14 annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken
15 after the payor or other third party received written notice of a claimed forfeiture or revocation under this
16 section.

17 (b) Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed
18 to the payor's or other third party's main office or home by certified mail, return receipt requested, or
19 served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt
20 of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount
21 owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the
22 probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or
23 with the court having jurisdiction of probate proceedings relating to decedents' estates located in the
24 county of the decedent's residence. The court shall hold the funds or item of property and, upon its
25 determination under this section, shall order disbursement or transfer in accordance with the determination.
26 Payments, transfers, or deposits made to or with the court discharge the payor or other third party from
27 all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

28 (8) (a) A person who purchases property from a former spouse, relative of a former spouse, or any
29 other person for value and without notice or who receives from a former spouse, relative of a former
30 spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally

1 enforceable obligation is neither obligated under this section to return the payment, item of property, or
2 benefit nor liable under this section for the amount of the payment or the value of the item of property or
3 benefit. However, a former spouse, relative of a former spouse, or other person who, not for value,
4 received a payment, item of property, or other benefit to which that person is not entitled under this section
5 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the
6 payment or the value of the item of property or benefit, to the person who is entitled to it under this
7 section.

8 (b) If this section or any part of this section is preempted by federal law with respect to a payment,
9 an item of property, or any other benefit covered by this section, a former spouse, relative of the former
10 spouse, or any other person who, not for value, received a payment, item of property, or other benefit to
11 which that person is not entitled under this section is obligated to return that payment, item of property,
12 or benefit, or is personally liable for the amount of the payment or the value of the item of property or
13 benefit, to the person who would have been entitled to it were this section or part of this section not
14 preempted."

15
16 **Section 23.** Section 72-2-1017, MCA, is amended to read:

17 **"72-2-1017. Honorary trusts -- trusts for pets.** (1) A Subject to subsection (3), a trust for a
18 ~~noncharitable corporation or unincorporated society or for a lawful noncharitable purpose~~ may be performed
19 by the trustee for 21 years but no longer, ~~whether or not there is a beneficiary who can seek the trust's~~
20 ~~enforcement or termination and~~ whether or not the terms of the trust contemplate a longer duration if:

21 (a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be
22 selected by the trustee; and

23 (b) there is no definite or definitely ascertainable beneficiary designated.

24 (2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a
25 designated domestic or pet animal ~~and the animal's offspring~~ is valid. ~~Except as expressly provided~~
26 ~~otherwise in the trust instrument, the following provisions apply:~~

27 ~~(a) No portion of the principal or income may be converted to the use of the trustee or to any use~~
28 ~~other than for the benefit of a covered animal.~~

29 ~~(b) The trust terminates at the earlier of 21 years after the trust was created or when no living~~
30 ~~animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer~~

1 within this subsection, to presume against the merely precatory or honorary nature of the disposition, and
 2 to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the
 3 transferor's intent.

4 (3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those
 5 subsections is subject to the following provisions:

6 (a) Except as expressly provided in the trust instrument, no portion of the principal or income may
 7 be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit
 8 of a covered animal.

9 ~~(e)(b)~~ Upon termination, the trustee shall transfer the unexpended trust property in the following
 10 order:

11 (i) as directed in the trust instrument;

12 (ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the
 13 transferor's will, under the residuary clause in the transferor's will; and

14 (iii) if no taker is produced by the application of subsection ~~(2)(e)(i)~~ (3)(b)(i) or ~~(2)(e)(ii)~~ (3)(b)(ii), to
 15 the transferor's heirs under 72-2-721.

16 ~~(d)(c)~~ For the purposes of 72-2-717, the residuary clause is treated as creating a future interest
 17 under the terms of a trust.

18 ~~(e)(d)~~ The intended use of the principal or income may be enforced by an individual designated for
 19 that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to
 20 it by an individual.

21 ~~(f)(e)~~ Except as ordered by the court or required by the trust instrument, no filing, report,
 22 registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason
 23 of the existence of the fiduciary relationship of the trustee.

24 ~~(g) A governing instrument must be liberally construed to bring the transfer within the applicability~~
 25 ~~of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry~~
 26 ~~out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's~~
 27 ~~intent.~~

28 ~~(h)(f)~~ A court may reduce the amount of the property transferred if it determines that that amount
 29 substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes
 30 as unexpended trust property under subsection ~~(2)(e)~~ (3)(b).

1 ~~(f)(g)~~ If no trustee is designated or no designated trustee is willing or able to serve, a court shall
2 name a trustee. A court may order the transfer of the property to another trustee if required to ensure that
3 the intended use is carried out and if no successor trustee is designated in the trust instrument or if no
4 designated successor trustee agrees to serve or is able to serve. A court may also make such other orders
5 and determinations as are advisable to carry out the intent of the transferor and the purpose of this
6 section."

7
8 **Section 24.** Section 72-3-102, MCA, is amended to read:

9 **"72-3-102. Necessity of probate of will.** Except as provided in 72-3-1101, to be effective to prove
10 the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of
11 informal probate by the clerk or an adjudication of probate by the court, ~~except that a duly executed and~~
12 ~~unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

13 ~~(1) no court proceeding concerning the succession or administration of the estate has occurred;~~

14 and

15 ~~(2) either:~~

16 ~~(a) the devisee or his successors and assigns possessed the property devised in accordance with~~
17 ~~the provisions of the will; or~~

18 ~~(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title~~
19 ~~during the time period for testacy proceedings."~~

20
21 **Section 25.** Section 72-3-122, MCA, is amended to read:

22 **"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions.** (1) No
23 informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a
24 proceeding to probate a will previously probated at the testator's domicile and appointment proceedings
25 relating to an estate in which there has been a prior appointment, may be commenced more than 3 years
26 after the decedent's death, except:

27 (a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's
28 death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter
29 upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the
30 applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; ~~and~~

~~(d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court must be limited to that property~~
an informal appointment or a formal testacy or appointment proceeding may be commenced after the time period if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under subsection (1)(a) or (1)(b) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 26. Section 72-3-317, MCA, is amended to read:

"72-3-317. Effect of formal testacy order -- modification or vacation -- fact of death -- remedies of alleged decedent. Subject to appeal and subject to vacation as provided ~~herein and~~ in 72-3-318 and this

section, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:

(a) were unaware of its existence at the time of the earlier proceeding; or

(b) were unaware of the earlier proceeding and were given no notice ~~thereof~~ of the proceeding, except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons:

(a) were unaware of their relationship to the decedent; or

(b) were unaware of ~~his~~ the decedent's death; or

(c) were given no notice of any proceeding concerning ~~his~~ the decedent's estate, except by publication;

(3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(c) 12 months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed

1 to the alleged decedent at ~~his~~ the last known address and the court finds that a search under 72-3-306 was
2 made. If the alleged decedent is not dead, even if notice was sent and search was made, ~~he~~ the alleged
3 decedent may recover estate assets in the hands of the personal representative. In addition to any remedies
4 available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent
5 may recover any estate or its proceeds from distributees that is in their hands or the value of distributions
6 received by them, to the extent that any recovery from distributees is equitable in view of all of the
7 circumstances."

8
9 **Section 27.** Section 72-3-131, MCA, is amended to read:

10 **"72-3-131. Compromise of controversies.** (1) A compromise of any controversy as to admission
11 to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity,
12 or effect of any ~~probate will~~ governing instrument, the rights or interests in the estate of the decedent, of
13 any successor, or the administration of the estate, if approved in a formal proceeding in the court for that
14 purpose, is binding on all the parties ~~thereto~~ to the proceeding, including those unborn, unascertained, or
15 who could not be located.

16 (2) An approved compromise is binding even though it may affect a trust or an inalienable interest.
17 A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

18
19 **Section 28.** Section 72-3-132, MCA, is amended to read:

20 **"72-3-132. Procedure for securing court approval of compromise.** The procedure for securing court
21 approval of a compromise is as follows:

22 (1) The terms of the compromise ~~shall~~ must be set forth in an agreement in writing which ~~shall~~
23 must be executed by all competent persons and parents acting for any minor child having beneficial
24 interests or having claims which will or may be affected by the compromise. Execution is not required by
25 any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably
26 be ascertained.

27 (2) Any interested person, including the personal representative, if any, or a trustee, then may
28 submit the agreement to the court for its approval and for execution by the personal representative, the
29 trustee of every affected testamentary trust, and other fiduciaries and representatives.

30 (3) After notice to all interested persons or their representatives, including the personal

1 representative of ~~the~~ any estate and all affected trustees of trusts, the court, if it finds that the contest or
2 controversy is in good faith and that the effect of the agreement upon the interests of persons represented
3 by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement
4 and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only
5 by their parents may be bound only if their parents join with other competent persons in execution of the
6 compromise.

7 (4) Upon the making of the order and the execution of the agreement, all further disposition of the
8 estate is in accordance with the terms of the agreement."

9
10 **Section 29.** Section 72-6-201, MCA, is amended to read:

11 **"72-6-201. Definitions.** In this part, the following definitions apply:

12 (1) "Account" means a contract of deposit between a depositor and a financial institution and
13 includes a checking account, savings account, certificate of deposit, and share account.

14 (2) "Agent" means a person authorized to make account transactions for a party.

15 (3) "Beneficiary" means a person named as one to whom sums on deposit in an account are
16 payable on request after death of all parties or for whom a party is named as trustee.

17 (4) "Financial institution" means an organization authorized to do business under state or federal
18 laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan
19 association, savings and loan company or association, and credit union.

20 (5) "Multiple-party account" means an account payable on request to one or more of two or more
21 parties, whether or not a right of survivorship is mentioned.

22 (6) "Party" means a person who, by the terms of an account, has a present right, subject to
23 request, to payment from the account other than as a beneficiary or agent.

24 (7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant
25 to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other
26 disposition of all or part of an account pursuant to a pledge.

27 (8) "POD designation" means the designation of:

28 (a) a beneficiary in an account payable on request to one party during the party's lifetime and on
29 the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death
30 of all of them to one or more beneficiaries; or

1 (b) a beneficiary in an account in the name of one or more parties as trustee for one or more
2 beneficiaries if the relationship is established by the terms of the account and there is no subject of the
3 trust other than the sums on deposit in the account, whether or not payment to the beneficiary is
4 mentioned.

5 (9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch
6 office of the financial institution in which the account is established or, if the terms of the account require
7 notice at a particular place, in the place required.

8 (10) "Request" means a request for payment that complies with all terms of the account, including
9 special requirements concerning necessary signatures and regulations of the financial institution; however,
10 for purposes of this part, if terms of the account condition payment on advance notice, a request for
11 payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for
12 payment.

13 (11) "Sums on deposit" means the balance payable on an account, including interest and dividends
14 earned, whether or not included in the current balance, and any deposit life insurance proceeds added to
15 the account by reason of death of a party.

16 (12) "Terms of the account" includes the deposit agreement and other terms and conditions of the
17 contract of deposit, including the type of account, the parties to the account, and the form, of the contract
18 of deposit."

19

20 **Section 30.** Section 72-6-213, MCA, is amended to read:

21 **"72-6-213. Alteration of rights.** (1) Rights at death under 72-6-212 are determined by the ~~type~~
22 terms of the account at the death of a party. The ~~type terms~~ of an account may be altered by written notice
23 given by a party to the financial institution to change the ~~type terms~~ of account or to stop or vary payment
24 under the terms of the account. The notice must be signed by a party and received by the financial
25 institution during the party's lifetime.

26 (2) A right of survivorship arising from the express terms of the account, from 72-6-212, or from
27 a POD designation may not be altered by will."

28

29 **Section 31.** Section 72-6-226, MCA, is amended to read:

30 **"72-6-226. Discharge.** (1) Payment made pursuant to this part in accordance with the ~~type terms~~

of an account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts."

Section 32. Section 72-16-301, MCA, is amended to read:

"72-16-301. Taxable transfers generally -- contemplation of death. (1) A Except as provided in this section, a tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any interest ~~therein~~ in the property or income ~~therefrom~~ from the property in trust or otherwise to any person, association, or corporation in the following cases, ~~except as provided in this section:~~

(a) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

(b) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of ~~his~~ death; or

(c) when the transfer is of property made by a resident or by a nonresident when ~~such~~ the

1 nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made
 2 in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or
 3 enjoyment at or after ~~such~~ death.

4 (2) ~~No~~ A transfer made before the 3-year period ending on the date of the decedent's death ~~shall~~
 5 ~~be~~ is not considered to have been made in contemplation of death.

6 (3) ~~Every~~ Each transfer during the 3-year period ending on the date of the decedent's death must
 7 be considered to have been made in contemplation of death, except:

8 (a) ~~no~~ a transfer shown to be a bona fide sale for an adequate and full consideration in money or
 9 money's worth may not be considered to be a gift made in contemplation of death;

10 (b) ~~if the a transfer was a gift to a donee made during the calendar year and if the decedent was~~
 11 ~~not required by~~ to the extent that the transfer was excluded from the definition of taxable gifts by reason
 12 of section 6019 2503(b) of the internal revenue code to file any gift tax return for the year with respect
 13 ~~to the donee, the transfer~~ Internal Revenue Code may not be considered to be a gift made in contemplation
 14 of death.

15 (4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy."
 16

17 **Section 33.** Section 72-33-701, MCA, is amended to read:

18 **"72-33-701. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust
 19 instrument otherwise provides or ~~where~~ when the joint action of the trustor and all beneficiaries is required,
 20 during the time that ~~a trust is revocable and~~ the person holding the power to revoke the trust is competent:

21 (1) ~~The~~ the person holding the power to revoke, and not the beneficiary, has the rights afforded
 22 beneficiaries under chapters 33 through 36-;

23 (2) ~~The~~ the duties of the trustee are owed to the person holding the power to revoke."
 24

25 **Section 34.** Section 72-34-513, MCA, is amended to read:

26 **"72-34-513. Nonliability for following instructions under revocable trust.** (1) Notwithstanding
 27 72-34-512, a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted
 28 pursuant to written directions from the person holding the power to revoke made when the person is
 29 competent, including a person to whom the power to direct the trustee is delegated.

30 (2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the

1 beneficiary in that part of the trust property."
2

3 **NEW SECTION. Section 35. Nonliability for refusing to follow directions under revocable trust.**

4 A trustee of a revocable trust is not liable for refusing to follow directions from a person holding the power
5 to revoke, including a person to whom the power to direct the trustee is delegated, if in accordance with
6 the trust instrument, the person holding the power is determined to be incompetent, as that or any similar
7 term or phrase is defined in the trust instrument, or, in the absence of a provision in the trust instrument,
8 if the trustee reasonably believes that the person holding the power is incompetent.
9

10 **NEW SECTION. Section 36. Codification instruction.** (1) [Sections 8 and 9] are intended to be
11 codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2,
12 apply to [sections 8 and 9].

13 (2) [Section 35] is intended to be codified as an integral part of Title 72, chapter 34, part 5, and
14 the provisions of Title 72, chapter 34, part 5, apply to [section 35].
15

-END-

If there is no one to clean up the property and it posed a health threat, it could be done by the department using funds from the Environmental Quality Protection Fund. The department would then have a lien against the property for the expenditures.

Closing by Sponsor:

SENATOR LYNCH thanked the committee for the good hearing on the complicated issue. There is a problem for people trying to get loans, he said, and he did not blame the lenders for their positions in not loaning money with the present law. There is no relationship in lending money and then owing more than that because the person defaults and they are looking for deep pockets. This law would change that. He told SENATOR DOHERTY that his whole point in sponsoring the bill was that ARCO should not have looked to anyone else to share the responsibility.

HEARING ON SB 132

Opening Statement by Sponsor:

SENATOR AL BISHOP, Senate District 9, sponsored SB 132. This was SENATOR MIKE HALLIGAN'S bill, he said, that he carried in 1991 and 1993. The bill is called the Technical Corrections Act regarding the state and probate. The first meeting was held in July at the annual Montana Bar Association and this material was circulated in advance of the meeting. There was a second meeting at the University Law School during the tax institute and over 20 lawyers were in attendance. Most of the changes come from the National Conference of Commissioners of Uniform State Law. Some of the changes were made by practicing lawyers in Montana, he said. It is a long, technical bill, he told the committee.

Proponents' Testimony:

Daniel McLean, on behalf of the State Bar of Montana, Section on Trust and Tax and Business Law, spoke in favor of the bill. The bill is a technical directions bill, he said. It is a follow-up to major changes done in the 1993 session to revamp parts of the probate code. The proposed changes are changes to the 1993 act to correct language, and many changes to the augmented state and elective share. He presented written testimony from Professor Eck, at the Law School, identifying item-by-item changes in the bill. (EXHIBIT 5). One important change has to do with inheritance tax, he said. Presently under state gift tax law a person can make a gift of property of up to \$10,000 per year to any donee without paying any gift or inheritance tax. This is called an annual exclusion. The old rule was that gifts within three years of death were presumed to be made in contemplation of death and therefore brought back in to the estate for tax purposes. That has been irrelevant in most instances in Montana because if a person didn't have to file a federal gift tax return for that gift, then they also wouldn't have to bring it back into

the estate for Montana purposes. One of the problems is when the gift is larger than \$10,000 within three years of death. If it was \$20,000 he would be required to file a gift tax for federal taxes but in Montana the whole \$20,000 would have to be brought back in entirely for tax calculations. In most cases, if going to a surviving spouse or a lineal decedent, there is no problem. For any other there would be a Montana tax assessed. Most people believe that the \$10,000 is free for the state as well as federal purposes, and it should be, so that it is consistent. This bill would say the first \$10,000 gift per year is excluded from the tax base if made three years before death. The Department of Revenue may have some idea of financial impact, he said. He said that representatives would have some amendments presented at the hearing and he would strongly oppose the changes, partly because they had no time to study them.

Kristen Juras, attorney, and immediate past Chairperson, Section on Trust and Probate, Great Falls, spoke to the committee. She explained the augmented estate. Before 1993 they did have an augmented estate provision in the code and it says that a person cannot disinherit their spouse. If the will leaves the assets to others, state policy has said that the surviving spouse receives a certain amount of property from the decedent's estate. Before 1993, it was one-third of the estate; in 1993 they changed the concept and now a spouse has to earn it. The longer you are married, the more you share in the decedent's estate. For one year, it would be three per cent. For 15 years, it would be fifty per cent. Another change is that the spouse's assets are also taken into account. They make sure that the surviving spouse is adequately provided for and not impoverishing the spouse. Another change is life insurance, she said. Prior to 1993 the elective share provisions could be defeated by purchasing a life insurance policy because it was not considered part of the augmented estate. The surviving spouse had no rights to elect against the life insurance policy. Because people now buy universal life policies, and use them as investments or retirement accounts, the 1993 law closed the loophole and made this insurance part of the augmented estate and the elective share process. So the elective share cannot be defeated by buying insurance. She said the cases are rare. She opposes the amendments by the insurance companies, she said.

Bob Pyfer, Senior Vice-President of the Montana Credit Unions League, said their interest in the bill had to do with Sections 29-31 of the bill, amending the multiple parties accounts law that was passed in 1993. This is a clarification of the original intent with respect to multiple account owners' ability to change the terms of the account. He urged support of the legislation.

Bruce McGinnis, attorney, Montana Department of Revenue, appeared to support SB 132. Their interest is the change to the inheritance tax. On Page 54, Section 32, he said, under that provision, the amendment is to clarify that if the decedent has made a gift to a person three years prior to his death, those

gifts would not be subject to taxation under the inheritance tax. They feel, based on a decision by the Supreme Court, that to fully effectuate that particular intent, you also have to amend Section 72-16-308 which is presently not included in the bill. The amendment would add a new Section 33 to the bill to provide that when you look at the clear market value of the property in passing, you do not include gifts excluded under the Internal Revenue Section. There would be no question then that the gift of \$10,000 made in contemplation of death is not included in the value of the estate. (EXHIBIT 6).

John Cadby, representing The Montana Bankers Association, said he sent the original draft to the four trust companies that are chartered to do business in Montana and it was determined to be fine with them. He withheld opinion on the amendments.

Opponents' Testimony:

Denny Moreen, representing the American Council of Life Insurance, the National Organization of Life Insurance Congress based in Washington, D.C., spoke in opposition to the bill as drafted. He presented the amendments presented by his clients. (EXHIBIT 7). These are being enacted in North Dakota, he said. The first group deals with the augmented estate. If the spouse decides that she is disinherited and wants to challenge the distribution of the assets, she demands what's called an elective share and the court determines whether she should get more than she's getting. The 1993 revision of the codes said that life insurance would be included in the estate, and he maintained that the insurance industry did not know it was coming and had no part in that ruling. Page 12, Line 5-14 taking out the two-year beneficiary clause had been removed, he said, and the industry was not happy with that. They propose to take the life insurance out of the augmented estate entirely. He said it was not like the other assets; it's unique. It is designed for a specific purpose. This inclusion frustrates that design, he argued. It is used for one reason: to have that sum of money paid immediately upon death to a person named as beneficiary. It buys peace of mind, he said. This is the business of life insurance. As examples he listed the case of a disabled child and a business contract for a partnership. These cases go to the court and the purposes are frustrated. He said the example Ms. Juras gave about the spouse being unable to get the insurance, was a theoretical problem and no cases exist. There is a policy reason not to make these changes. Property over which the deceased had ownership distributed through the estate is another type of inclusion, and he asked isn't it exactly what life insurance is not? It is not something the purchaser can take back, but is intended to go outside the process. It is designed not to go through the estate. It creates more problems that it solves. He explained the amendments they were seeking, dealing with notices, a two-day grace period, and an exemption from investigating notices. He doubted the uniformity with other states because of the numerous amendments over the years. He requested that the

committee enact the amendments they proposed.

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Doug Lowney, representing the Montana Association of Life Underwriters, which, he said, is a group of 680 people who work in the practice of writing life insurance in the State of Montana, appeared to support the amendments presented by Mr. Moreen, and felt the bill could be supported by his group. He said he saw the life insurance contract being a different sort of relationship between he and his client and the people named as beneficiary. He serves as a facilitator to require the company to pay a certain resources to whomever the client wants. If there is any loss to the estate, the argument could be made that it is the loss of premium only. It allows money to be delivered to a specific person or creditor to fill the needs of the client. He could no longer tell his clients they had this choice and he could not give them any assurance. He urged the amendments to repair the bill.

Greg Van Horssen, representing State Farm Insurance Company of Montana, stood in opposition of the bill. He reviewed Mr. Moreen's amendments and recommended the bill Do Pass with the amendments proposed.

Jacqueline Lendmark spoke on behalf of the American Insurance Association (AIA). She also represented Roger McGlen for the Independent Agents of Montana. She opposed the legislation only as it related to the distribution of the augmented estates in the life insurance proceeds and all insurance proceeds. She said they would both support the bill with a Do Pass recommendation with the inclusion of Mr. Moreen's amendments. Without the amendments, they would stand in opposition.

Questions From Committee Members and Responses:

SENATOR DOHERTY asked Ms. Juras about the partnership life insurance policies for key business people. He wondered if a spouse could get in to a key person policy that the spouse had no involvement in.

Ms. Juras said that the policies could be structured so that they had no negative effect including life insurance and augmented estate. Typically, she said, these policies are owned by the business partners. Spouses can also consent to transfers at the time they're done. Sometimes the estate is named as the beneficiary that accepts the proceeds to turn around and buy the insurance. It would not be negatively affected by including life insurance in the augmented estate, she said.

Mr. Moreen was questioned also by SENATOR DOHERTY regarding money paid to the court in an augmented estate, in which the insurance had no involvement with the direction or the beneficiary, what

would be wrong with it? Mr. Moreen said that it goes to the heart of the contract, that was what life insurance does, and that would defeat it.

SENATOR DOHERTY asked if it would affect the marketability of the product?

Mr. Moreen said it would because it would have a direct effect on the person purchasing the contract. He or she would not get that peace of mind, he contended.

SENATOR DOHERTY asked if they should be aware of a social policy regarding one spouse defeating another by writing them out of the policy.

Mr. Moreen replied, "Of course, but Ms. Juras' example is the only one I can find." He said it does not happen very often. The problems caused by keeping it in the augmented estate are greater than the problem it's intended to solve.

SENATOR DOHERTY further inquired about the division to the surviving spouse for tax purposes, which is one advantage of life insurance. Or is it, he asked? Mr. Moreen does not do taxes and didn't answer the question.

SENATOR BAER asked Ms. Juras about the part of the code that allows a probate attorney fee to be limited statutorily to a percentage of the value of the estate and wondered if inclusion into the augmented estate affected this situation.

Ms. Juras said it would not, but said attorneys are committed at two per cent beyond probate assets.

SENATOR BARTLETT asked Mr. McGinnis what impact on state revenue the \$10,000 exclusion of property would have.

Mr. McGinnis said a ball park figure would be based on the fact that they receive 800 estates a year that owe a tax. If each excludes a \$10,000 gift, it would be \$800,000 excluded, not going to lineal decedents or spouses. At that rate, it would be between \$150,000 and \$300,000 per year impact, he said.

SENATOR RIC HOLDEN asked Ms. Juras asked about a statement she made that the bill was consumer-friendly. The others said it was not so. He wanted to know about a church being a beneficiary.

Ms. Juras said it was current law.

SENATOR HOLDEN asked Mr. Moreen about needing a policy change.

Mr. Moreen said life insurance is something you purchase and it is outside of the estate.

SENATOR HALLIGAN asked if the augmented estate was designed as a

safety net to make sure someone is not going on public assistance?

Ms. Juras said that was correct, it predated the 1993 law when wives did not work. She then discussed with the senator how many states had adopted this statute and she did not know.

SENATOR HALLIGAN asked if they had any problems with life insurers having to sue in court to get their proceeds because they were tangled up in an augmented estate issue?

Mr. Juras said she was not aware of any. There were safeguards in the statutes that do permit the insurance to pay if they haven't received notice of the claim of the surviving spouse. They can interpolate it in court.

SENATOR HALLIGAN asked what the experience had been among practitioners, after they adopted the radical changes of the percentages in 1993 in terms of being married 1 year and getting three per cent, etc.?

Ms. Juras said that none of the practitioners she knew had had to implement an elective share under the statute, so there is no experience. So it did not happen very often.

Closing by Sponsor:

SENATOR BISHOP said that law is not a stagnant thing, but is ever-changing to keep abreast of society. People are want to resist change, he said, and although he could understand insurance companies' problems, he thought that it was more of a marketing concept. This bill will protect those who need protection. Ms. Juras made the most compelling statement, he said, when she talked about getting the spouses' consent. That takes care of most problems and is a commonplace thing on a will or any transfer of property out of the ordinary, it takes care of it, and there is no scheme to disinherit the spouse, he said.

B.4 312-3

DATE _____

1-31-95

SEN:1995
wp.rollcall.man

August 3, 1994

To: Commissioner Edwin E. Eck
Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 1-31-95
FILE NO. 23132

Dear Ed:

Since I plan to be away from office matters until early September, I'm writing this during the ULC conference in Chicago so that you can advise Robert C. Pyfer of Montana Credit Union Network of my thoughts regarding the questions posed in his letter to you of July 28.

The questions posed probe the meaning of Section 6-213 of UPC (1990). More specifically, the language "The type of account may be altered by ..[notice]..given by a party...to change the type of account or to stop or vary payment under the terms of the account" is involved. The questions all probe the extent to which a party may affect the interests in the account of other parties or beneficiaries.

My answer to the questions is that a party, by use of 6-213 or by closing the account by withdrawal and opening a new account with quite different provisions, can alter an account's provisions regarding survivors rights in any respect and without reference to wheter a different classification of account results.

I recognize the possibility that "type of account" might be read as suggested in 6-203 to refer to the general categories of multiple person accounts covered by the legislation; e.g., those mentioned in 6-203(a). However, "type" is not defined by the statute and so may be used with different meanings in various parts of the legislation.

I contend that "type of account" in 6-213 is used in the sense of "terms of the account". In support, I note that the section on which 6-213 is based (section 6-105 in original UPC) used the language "form of the account". The word "form" is closer to "terms" than is "type" in my view.

More importantly, the policy reflected by 6-213 is that a "party" to a multiple-person account as defined by 6-201(b) has total control over the account balance, meaning that he or she can do anything by way of altering the account that might be accomplished by withdrawal to close the account followed by opening a new account in different terms. It would be unfortunate, in my view, if a credit union had to insist that an account be closed and re-opened as a condition to its avoiding criticism and possible liability for respecting a written demand by an account party for a change in the terms of an account.

If section 6-213 is read to force such an unfortunate procedure, the party seeking a change is invited to close the account by withdrawal and take his business to a more cooperative

depository. I doubt that a court would construe "type of account" to force such a "can't win" scenario on a bank or credit union.

I realize that the power of a party to cause changes of all sorts in account terms in which others have interests can be used abusively. However, the same is true of any multiple person account involving two or more parties. Persons depositing funds in an account that enables another party (note that an agent is not a party; 6-201(b)) to control the account must live with the consequences. Depositories should alert customers to the perils to one's savings that attend addition of names to an account otherwise than as p.o.d. beneficiaries or as agents of the principal party.

Nat Sterling and I agree that "type of account" in section 6-213 probably should be changed to "terms of the account" as defined in 6-201(12). I intend to recommend that JEB-UPC consider a technical amendment to this effect. If I can get the group to agree to this by correspondence, we would be in position to get the matter before the ULC Executive Committee for consideration at its mid-winter meeting in 1995, and on to the Conference in time for action at the 1995 annual meeting. If you can effect this technical change in the Montana statute before late 1995, I think it would be wise to do so.

Sincerely,

Richard V. Wellman

Printed by: Lane, Valencia
Printed at: 1-30-95 6:57p

EXHIBIT NO. 6DATE 1-31-95BILL NO. SB 132

From: McGinnis, Bruce
Sent at: 1-30-95 5:03p
Message: Valencia: Attached are amendments to SB-132. If you have any questions please call me at 444-3340. Bruce
Subject: SB-132 Amendments
Author: Bruce McGinnis
Doc name: SB0132A1.LGA
Type: PC file
To: Lane, Valencia
cc: Woodgerd, David
Miller, Jeff

Amendments to Senate Bill 132
Introduced Copy

Prepared by Department of Revenue

REASON FOR AMENDMENT: This amendment clarifies that a transfer of property made in contemplation of death will not be taxed on the property's clear market value. Senate Bill 132 would amend section 72-16-301, MCA, to provide an annual gift exclusion of \$10,000 per donee for gifts made within three years of the decedent's death. In other words the first \$10,000 of gifts made to a donee during the year would not be subject to state inheritance tax. This parallels the federal estate and gift tax provisions. However, unless 72-16-308, MCA is also amended to clarify that Montana's inheritance tax will not be imposed on the market value of such gifts, the two statutes would be in conflict. Section 72-16-308(2), MCA, as set forth below is explicit in stating that only the deductions allowed in that statute will be allowed when determining the value of property transfers for inheritance tax purposes. This amendment harmonizes the two statutes.

1. Title, line 19.

Following: "72-16-301,"

Insert: "72-16-308"

2. Page 54.

Following: line 15

Insert: "Section 33. Section 72-16-308, MCA, is amended to read:

72-16-308. Tax to be on clear market value -- deductions allowed in determining value -- valuation of certain farm and business property. (1) The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property so passing by any such transfer, the following deductions and no other shall be allowed:

- (a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;
- (b) expenses of funeral and last illness;
- (c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;
- (d) the ordinary expenses of administration, including:
- (i) the commissions and fees of executors and administrators

and their attorneys actually allowed and paid;

- (ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and
- (e) federal estate taxes due or paid; and
- (f) the annual gift exclusion provided in section 2503(b) of

PROPOSED AMENDMENTS TO SENATE BILL NO. 132

INTRODUCED COPY

Prepared by Dennis Moreen
American Council of Life Insurance
January 30, 1995

1. Page 2, line 21

Strike: "an insurance or annuity policy,"

2. Page 2, line 22

Following: ";

Insert: "or"

3. Page 2, line 23

Strike: line 23 in its entirety

Renumber: subsequent subsections

4. Page 2, lines 26 through 27

Following: "donee,"

Strike: remainder of line 26 through "appointment" on line 27

5. Page 2, line 30

Following: "(a)"

Strike: "an insurance or annuity policy,"

6. Page 3, line 1

Following: ";

Insert: "or"

7. Page 3, line 2

Strike: line 2 in its entirety

8. Page 3, line 3

Strike: "(c)"

Insert: "(b)"

9. Page 12, lines 5 through 14

Strike: subsection (D) in its entirety

10. Page 13, lines 12 through 16

Strike: subsection (B) in its entirety

Renumber: subsequent subsections

11. Page 14, line 5

Following: ";

Insert: "(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death;"

Renumber: subsequent subsections

12. Page 14, lines 28 through 30

Strike: line 28 in its entirety through "." on line 30

13. Page 15, line 8

Following: "."

Insert: "(c) Life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate are also excluded from the decedent's nonprobate transfers."

14. Page 19, line 13

Strike: "good faith"

15. Page 19, line 16

Following: "liable"

Insert: "only"

Following: "for"

Strike: remainder of line 16

16. Page 19, line 17

Following: "taken"

Insert: "two or more business days"

17. Page 19, line 18

Following: "."

Insert: "The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payer or other third party for actions taken pursuant to the governing instrument."

18. Page 19, line 19 through line 20

Following: "notice"

Strike: remainder of line 19 through "filed" on line 20

19. Page 19, line 22

Following: "."

Insert: "Notice to a sales representative of the payer or other third party does not constitute notice to the payer or other third party."

20. Page 19, line 27

Following: "."

Insert: "The availability of an action under this section does not prevent the payer or other third party from taking any other action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written

notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for any such payment, transfer, or deposit with the court, even if no probate proceedings have been commenced before the payment, transfer, or deposit."

21. Page 20, line 1

Following: "."

Insert: "A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court."

22. Page 20, line 2

Following: "claims"

Insert: "under the governing instrument or applicable law"

23. Page 41, line 21

Following: the first "party"

Insert: "does not have a duty or obligation to make any determination as to whether the decedent was a victim of a felonious killing or to seek any evidence with respect to a felonious killing even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in any such felonious killing. A payer or other third party"

24. Page 41, line 21

Following: "is"

Insert: "only"

Following: "for"

Strike: "a payment made or other action"

Insert: "actions"

Following: "taken"

Insert: "two or more business days"

Following: "after"

Insert: "the actual receipt by"

25. Page 41, line 22

Strike: "received"

Insert: "of"

Following: "notice"

Insert: "."

Strike: remainder of line 22

Insert: "The payer or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (b)."

26. Page 41, line 23

Following: "(b)"

Insert: "The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section."

27. Page 41, line 25

Following: "."

Insert: "Notice to a sales representative of the payer or other third party does not constitute notice to the payer or other third party."

28. Page 41, line 30

Following: "."

Insert: "In addition to the actions available under this section, the payer or other third party may take any action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for the payment to the court of amounts owed or transferred to or deposit with the court of any item of property, even if no probate proceedings have been commenced before the payment, transfer, or deposit. "

29. Page 42, line 1

Following: "."

Insert: "A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court."

30. Page 42, line 4

Following: "A"

Strike: "person"

Insert: "bona fide purchaser"

Following: "property"

Strike: "for value and without notice"

31. Page 42, line 12

Following: "law"

Insert: ", other than the federal Employee Retirement Income Security Act of 1974, as amended,"

32. Page 44, line 14

Following: "party"

Insert: "does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payer or other third party"

Following: "is"

Insert: "only"

Following: "for"

Strike: a payment made or other action"

Insert: "actions"

Following: "taken"

Insert: "two or more business days"

33. Page 44, line 15

Following: "after"

Insert: "the actual receipt by"

Following: "party"

Strike: "received"

Insert: "of"

Following: "notice"

Insert: "."

Strike: "of a claimed forfeiture or revocation under this section."

Insert: "The payer or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (b)."

34. Page 44, line 17

Following: "(b)"

Insert: "The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a divorce, dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred."

35. Page 44, line 24

Following: "."

Insert: "In addition the actions available under this section, the payer or other third party may take any action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payer or other third party shall file with the court a copy of the written notice received by the payer or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payer or other third party for the payment to the court of amounts owed or transferred to or deposit with the court of any item of property, even if no probate proceedings have been commenced before the payment, transfer, or deposit."

36. Page 44, line 25

Following: "."

Insert: "A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court."

37. Page 44, line 28

Following: "A"

Strike: "person"

Insert: "bona fide purchaser"

38. Page 44, line 29

Following: "for"

Strike: "for value and without notice"

39. Page 45, line 8

Following: "law"

Insert: ", other than the federal Employee Retirement Income Security Act of 1974, as amended,"

DATE 1-31-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 200 SB 132

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
GEORGE BENNETT	MONT. BANKERS ASSN	SB 200	✓	
Bruce McGinnis	DOR	SB-132	✓	
Bob Robinson	MDHES	SB 200	✓	
John Caddy	MT BANKERS ASSN	SB 132	✓	
Bruce Gerlach	Independent Bankers	SB 200	✓	
Denny Moreau	AGLT	SB 132	✗	✓
Byrd Hoggard	Mt. Indep. Bankers Assoc	SB 200	✓	
Frank Cronley	M Bankers Assoc		✓	
Tim Gill	MT Livestock Ag. Credit Inc.	SB 200	✓	
Doug Lowrey	Mt Assoc. Life Underwriter	SB 132	✓	
Bill Kirtley	MDHES	SB 200	✓	
Daniel N. McEach	State Bar of Montana	SB 132	✓	
Rogers Alexander	MT Professional Marketers	SB 200	✓	
Andrew Neil	Valley Bank-Helena	SB 200	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Kristen Juras	State Bar	SB 132	✓	
Riley Johnson	NFIB	SB 200	✓	
David Owen	MT Chamber	SB 200	✓	
Donald W. Hutchinson	STATE OF MT. Banking & Financial Div.	SB 200	✓	
Bob Stephens	Dutton State Bank	SB 200	✓	
Steve Turkiewicz	Mt. Auto Dealers Assn	SB 200	✓	
Bob Pyfer	MT Credit Union League	SB 200	✓	
Bob Pyfer	MT Credit Union League	SB 200	✓	
Greg Van Housen	State Farm Insurance Co	SB 132	✓ with Amendment	
Jacqueline Denmark	Am. Ins. Assoc	SB 132	✓ w/ amend	
Roger McEllis	Ind. Ins. Agents of Mt	SB 132	✓ w/ amend	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 2, 1995, at 9:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 189, SB 272, HB 108, HB 37
Executive Action: SB 13, SB 132, SB 167, SB 149, SB 272,
HB 37, HB 108

EXECUTIVE ACTION ON SB 132

Motion: SENATOR AL BISHOP MOVED THAT SB 132 DO PASS.

Discussion: SENATOR BISHOP thought the biggest concern was the insurance industry objections over the augmented estate issue. Also, the concern of the Department of Revenue was the cost, estimated at \$150,000 to 300,000, but that they had supported the bill, he said.

He explained the concept of augmented estate makes available to the surviving spouse a certain percentage of an insurance policy if the beneficiary is other than the spouse, depending on the

length of the marriage.

CHAIRMAN BRUCE CRIPPEN discussed a key-person policy on businesses and there was confusion among the committee on whether or not this issue would be included in the bill.

Valencia Lane explained that existing law already provides for life insurance to go into the augmented estate, done in 1993. This bill does not change that, she said, and the amendments offered by Mr. Moreen would change that.

Valencia Lane explained there were four sets of amendments. Some of the members felt they would be more comfortable with the amendments from Mr. Moreen which exempted life insurance from the augmented estate.

Dennis Moreen explained the amendments he presented. Part of the amendments pertain to the augmented estate, he said, and the other part dealt with the notices that are the duty of insurance companies as pertaining to murder or divorce. In such cases, the insurance designations are void, he said.

SENATOR SUE BARTLETT said she would not be comfortable taking insurance out of the augmented estate. Some agreed, some disagreed. SENATOR STEVE DOHERTY agreed. He thought it would be appropriate for the insurance company to pay the money to the court and let the court decide the distribution. Insurance can be used as a new means of disinheriting the spouse, he said.

SENATOR BISHOP asked what was so sacred about insurance? He said SENATOR DOHERTY was right in that other property is brought back in to the augmented estate. If the spouse consents to the transactions, all problems will be solved.

SENATOR BARTLETT said because of the multiplicity of insurance products now, it was a good way to move assets and disinherit a spouse.

CHAIRMAN CRIPPEN said that the only part of the policy that would be of value at the time of death is the cash surrender value and any accumulated dividends.

SENATOR LARRY BAER said he did not think it could be used as a disinheritance tool and that it was a matter of specific intent.

SENATOR BISHOP said that if a gift is made and there is no valuable consideration then you make a transfer and it is brought back into the estate within three years of death.

CHAIRMAN CRIPPEN used the example of a parent buying life insurance and listing as beneficiaries children of a first marriage. If there was a falling out of the second marriage and the step-father was financially strapped, he could contest the distribution. If the child was given money to buy the insurance

on the parent, however, it would not be included, he said. It passes outside of probate and outside of tax purposes, he said.

SENATOR BARTLETT questioned whether or not that situation would fall in the augmented estate category. She said the determination would fall to the ratio of assets.

SENATOR DOHERTY said it would only happen when the spouse elects to do anything and asks for an augmented estate in electing against the will. He disagreed with the cash surrender value of a policy saying it would not be worth much.

SENATOR BISHOP didn't see the problem with bringing the money into the augmented estate. If there were plenty of assets, he said, the judge could do whatever he saw fit, and it would probably only delay the payment for several months.

SENATOR LORENTS GROSFIELD said about the only time this would occur is if a man would buy a 5 million dollars policy shortly before death and give it to someone other than the spouse. He thought the chance of this happening would be remote. He thought whatever was stipulated by the person buying the insurance should be honored and paid immediately upon death.

SENATOR SHARON ESTRADA said she did not think the people at that table had the right to interfere with someone's wishes.

Motion: SENATOR BISHOP WITHDREW HIS MOTION.

CHAIRMAN CRIPPEN asked for a show of hands on who would be in favor of working on these amendment and taking insurance out. Eight members for in favor; three voted "no." The Chairman instructed the legal staffer to assist in making the changes.

Valencia Lane, the committee staffer, explained the additional amendments to the bill. She said the amendments by Greg Petesch were technical corrections.

Motion: SENATOR GROSFIELD MOVED THE PETESCH AMENDMENTS.

Vote: The vote CARRIED UNANIMOUSLY by oral vote.

Ms. Lane explained additional amendment by the Department of Revenue. They simply want to make the same reference in another section of law, she said, to match what is being done in the bill.

Motion: SENATOR GROSFIELD MOVED THE DEPARTMENT OF REVENUE AMENDMENTS.

Discussion: Discussion followed about the fiscal note and it was suggested that the bill fell within the contingent voidance provisions. If that was the case, the chairman asked if they wanted to adopt this. The House can exclude the amendment if.

they want to blow the bill, SENATOR BAER offered.

Vote: The MOTION PASSED with on an oral vote with SENATOR DOHERTY voting, "no."

Discussion: CHAIRMAN CRIPPEN said that with the motion went the provision that Valencia Lane would draft a contingent voidance amendment.

EXECUTIVE ACTION ON SB 167

Discussion: SENATOR STEVE BENEDICT was asked to speak to the bill. He asked the committee to look at the second grey bill dated February 1 and the amendments dated January 31. It was pointed out that there were amendments from both Beth Baker and SENATOR DOHERTY. The sponsor said that he had incorporated Beth Baker's amendment in the set of amendments, which took it though Section 8. The original had only five, he said. Page 8 of Section 5 eliminated reference of the legislative finance committee. He struck everything in Section 5, he said, in an attempt to streamline the bill, except the requirement of the Budget Office recommendations for reporting federal mandates. He eliminated the requests from outside sources from the Office of Budget Planning. He took out the dates of reporting and it would be included in the next budget cycle. He said that SENATOR DOHERTY had shared some amendments with him and that he had adopted some of his ideas into this bill, however, he felt that the language watered down the bill until he was not comfortable with it. He said that SENATOR DOHERTY'S amendments would have put everything into the Governor's office and he said they all knew the Governor did not have the staff. The OBP gets the requests and has the information anyway, he said.

SENATOR DOHERTY said the second grey bill is vastly improved. His amendments, he said, make the investigation and recording the responsibility of the Governor's office with the intention that he could assign them to whomever or whatever agency he wants. It would be unusual to specify the OBP he thought, in that it would restrict the Governor.

CHAIRMAN CRIPPEN asked the sponsor if he would object to this additional amendment, to which he replied that he would prefer not to because it would water down the language of the bill. The chairman asked if it would not be ideal to rest the responsibility with the Governor. The sponsor did not object.

SENATOR GROSFIELD said that if the Governor made a request for information and action on a specific mandate, the Governor would have a lot more force behind the request than the OBP would.

CHAIRMAN CRIPPEN said that he would prefer to see the Governor in control over bureaucrats, who would not have the accountability necessarily.

2-2-95

EXECUTIVE SESSION

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powers issue to give judicial power to another branch. She saw the goal in this legislation fragmentation of power among the three branches rather the concept of separation of powers. She asked him to help her clarify the difference.

SEN. EMERSON said he could not because they were her words and he thought it was all separation of powers.

REP. JOAN HURDLE asked who appoints the five members of the Judicial Standards Commission and for what term. She wanted the same information about the practices commission.

SEN. EMERSON said he had not mentioned the practices commission and that was set up specifically for certain purposes and is not set up by the Constitution. The Judicial Standards Commission is set up by the Constitution and includes two judges who are selected by all the judges in the state. The bar association chooses the one attorney and the Governor appoints two laymen. They serve four-year terms.

REP. HURDLE asked for more information about the practices commission and how the two relate.

Mr. Shanahan said they don't relate. The supreme court has the authority to regulate the bar and the practice of law. The Commission on Practices is specifically for that purpose. This bill would eliminate the Commission on Practices because it would provide for the regulation of the practice of law.

{Tape: 1; Side: A; Approx. Counter: 59.3}

Closing by Sponsor:

SEN. EMERSON contended that the judicial system needed to be changed and this constitutional amendment would change it. He said it was imperative that they act immediately. He said that there are always groups which want to control the people and the economy. He said the framers of the Constitution had provided for safety from those groups with separation of powers in government. He said that the law profession had had the largest growth in the past 25 years and it has created a problem because lawyers control one-third of the government through the judicial system. He cited how this has caused problems for Montana and how this proposed legislation would bring that under control.

{Tape: 1; Side: B}

HEARING ON SB 132

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, proposed SB 132 as a change to the uniform probate code.

Proponents' Testimony:

Professor Ed Eck, University of Montana law professor, submitted a summary of his comments and addressed the changes which were made in the Senate. EXHIBITS 5 and 6 He said that what they "caught" was intended as a law reform bill which was nonpartisan in its attempt to clean up some ambiguities. The noncontroversial bill took a substantial turn when the American Council of Life Insurance lobbied the Senate Judiciary Committee and made a substantial change in the rights of surviving spouses in the estates of their deceased spouses. He said that after the Senate action, it would now be possible for a husband to acquire a large insurance policy and exclude his wife from any claim by naming a third party as beneficiary to the policy proceeds.

He explained the rights which existed before the Senate action in order to assist in the understanding of this proposed act. He explained how the 1974 law applied to cases where someone might try to circumvent the spouse in providing for beneficiaries in estate planning. In 1993 there were revisions which were behind the dispute in this bill. The main change was that life insurance is subject to the same rule as other assets that a surviving spouse of at least 15 years of marriage would be eligible for one-half of the benefit.

He quoted from EXHIBIT 6 in outlining the insurance industry's arguments which were raised in their attempt to change the original version of SB 132. He asked the committee to inquire from the insurance industry to name one principle reason why life insurance should be treated differently from every other asset. He noted that the American Association of Retired Persons (AARP) had endorsed the acts which were taken by the legislature in 1993 and specifically endorsed the inclusion of life insurance in the protected provisions for the survivor spouse. He distributed EXHIBITS 7, 8, and 9 for the committee's information and consideration.

Dan McLean, State Bar of Montana Section on Trusts, Estates and Business Law, rose in support of the bill but in opposition to the amendments made in the Senate. He explained the elective share and the augmentation in the policy protection provisions. He said this was intended as a technical corrections bill. The main purpose of the bill was to clean up some language and ambiguity in the law. He outlined some of the technical changes in the bill which had to do with beneficiary designation protection for grandchildren if the child of the decedent should die before the owner of the policy and also a change in the reference to inheritance taxes.

He said that the amendments only protect the idea that someone can use life insurance to get around the spousal protection provisions. If someone had a legitimate reason to do so such as key man insurance, the simple solution to that it would be to obtain the spouse's consent as is done with IRA's, etc.

Bruce McGinnis, Attorney, Department of Revenue, supported the bill especially with regard to sections 32 and 33 of the bill on page 56. The tax and probate section of the bar association made changes to the definition of what is a gift in contemplation of death. The department felt that to fully effectuate the intent in changing that definition, an amendment needed to be made to section 72-16-308, MCA. They recommended those amendments to the Senate Judiciary Committee in section 33 of the bill..

Denny Moreen, Attorney, American Council of Life Insurance (ACLI), had presented the amendments to the Senate which would, if enacted, take life insurance out of the augmented estate. He presented his statements in written form as well as responding to previous testimony. EXHIBIT 10

He said that if the surviving spouse is not satisfied with the results of the probate, they can demand the elective share. He said that life insurance has not been traditionally included in that process because it is a product purchased for the specific reason that those funds will go directly to the beneficiary without having to be involved in probate. He said the law passed in 1993 included insurance in the augmented estate. He presented examples to substantiate the reasons for the amendment which would remove life insurance from the augmented estate. One example would be the naming of a disabled child as beneficiary and another would be key man insurance.

{Tape: 1; Side: B; Approx. Counter: 39.4}

Doug Lowney, Montana Association of Life Underwriters, said he was impressed with the work which was done in realigning the probate codes, but disagreed with the way that life insurance has been handled since 1993. He preferred to return to the way it was handled prior to that change in the law and stood in agreement with the Senate's decision regarding the amendments. He said that life insurance is a unique contract in that the loss is in the premium rather than in the value of the contract. The surviving spouse could then ask for the return of the premium, though he did not think that was what they wanted to do. In key man insurance, the purpose is to ensure that the business can continue after the death of the owner rather than for providing for the surviving spouse.

He said what the 1993 Legislature did was to allow insurance which named surviving children who were not a part of the marriage to be taken by the surviving spouse. Sometimes a specific creditor has been named for the receipt of the insurance proceeds because of an obligation. Because of this law, that creditor cannot rely on the insurance contract paying them because the spouse can take it. He suggested that the majority of people who purchase life insurance do so before writing a will and this suggested to him that it is the first place of importance in designating the receipt of assets upon their death.

Including insurance in the estate makes it bigger thus raising the potential probate fee.

Jacqueline Lenmark, American Insurance Association, stated support of the bill and especially of the amendments. She said that one principled reason why these amendments were valid and should remain on the bill was that frequently in a disputed dissolution life insurance is purchased with the agreement that child support would continue to be paid should something happen to one of the spouses. Without the amendments they will have difficulty in making that sort of an agreement because of the potential of remarriage of the spouse who purchased the insurance.

Roger McGlenn, Executive Director, Independent Insurance Agents' Association of Montana, stood in support of SB 132 as amended for the same reasons as previously stated. He said that a simplified reason was they were talking about freedom of choice for the consumer.

Joan Himel, Montana Credit Union League, said they were concerned with sections 29 - 31 regarding multiple party account owners and the rights they have to their accounts. They felt the clarifications in these sections are brief but necessary.

{Tape: 2; Side: A}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. ANDERSON asked if the motivation behind the opposition to the amendments was to increase attorney's share in an augmented estate.

Professor Eck replied that if life insurance is included in the augmented estate, that it is not the probated estate. The Montana statute sets a reasonable limit on attorney fees and then there is a percentage of the probate estate as being the maximum. Life insurance being included in the augmented estate calculation for the surviving spouse has nothing to do with the reasonable fee or the probate estate because they are totally unrelated.

REP. ANDERSON gave an example to examine whether this was a double-edged sword situation:

An older gentleman married a younger woman and he purchased an insurance policy to take care of his children from a previous marriage.

Professor Eck said the children would not be left out because the scenario probably describes a relatively brief marriage. The

surviving spouse's interest would start at 2% a year of marriage though not 2% of every asset. His life insurance policy could still benefit his children. He pointed out example 1 of **EXHIBIT 6** to illustrate how it would work. The surviving spouse does not get 2% of every asset, but when all the assets are added together and multiplied by the appropriate percentage and it would be determined that the spouse had received the amount, the other assets are not altered. But when the spouse is deprived of the appropriate amount, then other assets would be considered. The worst potential case in which the insurance might be disturbed would be example 4 on page 5 of **EXHIBIT 6** where the only asset is an insurance policy payable to someone other than the spouse of at least a 15-year marriage.

REP. ANDERSON asked about the comment that the surviving spouse is only out the value of the premium and he asked if there is a way to recover the value of the premium.

Professor Eck responded that the gift of a life insurance policy is made when it is irrevocably transferred to a different owner. To suggest that the gift occurs when the premium is paid really isn't true, but it occurs when it becomes irrevocably paid out.

REP. KOTTEL said she was confused about some of the issues and said that with the spouse's elective share it was not right to dissipate the value of the estate to the detriment of the spouse. However, if an asset of value were sold or given away, the net worth of the estate would be reduced. When life insurance is purchased, the only change in the net value of the estate would be the assets of the estate used to pay the premium and the time value of money, but not necessarily the amount paid upon death. She asked why the spouse should be able to use their elective share and set aside the will to take one-half of the death benefit which was to provide for any other person or entity.

Professor Eck said that in the example she gave where a person made only one premium payment prior to death, he could not see where the surviving spouse had been injured beyond the amount of that one premium. But, he said, that was not the usual circumstance. He said that in a 15-year marriage in the particular circumstance she had cited, it would be counted in up to one-half of all of the assets.

REP. KOTTEL cited another example where a spouse is a spendthrift and the only things the insured can keep out are the premiums on the policy for a child from a previous marriage. She again asked if that spouse could set aside the will (there is no estate left) and take one-half of the insurance policy.

Professor Eck said that in her example that was true, but if the argument were carried out, it was true of every asset. A spendthrift spouse should be curtailed through the elimination of elective share altogether. He said there were other ways to deal with that sort of situation through trusts, etc.

REP. KOTTEL corrected Professor Eck about the percentages allowable to the surviving spouses. She said she could not see why insurance proceeds should go into an augmented estate. She asked that when there was a trust funded with the proceeds of an insurance policy, if he saw any problems that the trust might not be funded because the trust was the beneficiary of the policy which became subject to the spousal elective share. .

Professor Eck answered, "No, the trust code has an express provision....." The basic common law rule is that a trust has to have property to be a trust. The 1989 trust code indicates that the mere designation of a trust as a beneficiary of a life insurance policy is a sufficient corpus to satisfy that requirement.

REP. KOTTEL asked about the key man insurance owned by the partnership whether the spouse would not have a right to the proceeds.

Professor Eck said that the only insurance which is included is insurance that is owned by the decedent. Insurance owned by another partner.....REP. KOTTEL interrupted that she was talking about insurance owned by the deceased partner. He replied that in that circumstance, that insurance would be included in the augmented estate for the purpose of the spousal protection. He mentioned other ways around that which could include a consent which would take care of the problem.

REP. KOTTEL asked if a charity were named as the beneficiary, who would own it.

Professor Eck said that for tax purposes people often transfer ownership of the policy to the charity and therefore it would not be included in the augmented estate. Another example would be in naming the charity as the beneficiary, then that asset would be part of the augmented estate if there were a deficiency in other assets.

REP. KOTTEL referred to the Internal Revenue Code which allows a person to give up to \$20,000 per year if their spouse has not given their \$10,000 share and that second \$10,000 would not have to come out of the spouse's income. She asked if this would allow for that or only for the first \$10,000 and if the estate would become augmented to the other \$10,000.

Professor Eck said he was troubled by the question and did not understand it. He said that there were separate provisions addressed relative to inheritance tax purposes that have nothing to do with this issue. He described the provision in the bill which dealt with inheritance tax that only the first \$10,000 would be subject to the Montana inheritance tax.

REP. KOTTEL asked why and he said he thought this was an improvement over the last situation and they had not considered dovetailing it with the federal gift tax provisions.

REP. KOTTEL said she understood that they wanted to close some loopholes and described other ways a spouse could be disinherited. She asked if they had closed a loophole that also would benefit an individual in their attempt to closing the loopholes.

Professor Eck said they could not close them all, but they could close all reasonable loopholes. He described further his reasons for supporting the legislation.

REP. HURDLE asked if there were ever instances where there was no estate and it would not go to probate at all.

Professor Eck said there were many cases like that.

REP. HURDLE asked about those cases of no estate but there was a life insurance policy favoring a disabled son, then would there be a probate.

Professor Eck said there would not be a probate. The 1993 action did not subject that policy to probate. It would be considered in determining whether the spouse got the fair share.

REP. LIZ SMITH asked what impact this would have if the medical lien bill should pass which would provide that after three years from the dissolution of assets, the state would have an option to place a lien on all that dissolution if the surviving spouse should go under Medicaid services.

Professor Eck thought that if there was a lien provision, it would still likely affect the surviving spouse. If by reason of the augmented estate, the surviving spouse would have more assets, there are just more assets for the lien to attach directly to the surviving spouse rather than to the decedent.

Mr. McLean answered that the bill would not be impacted by the Medicaid lien bill nor would this bill impact that one.

REP. LOREN SOFT posed an example of a couple having farmed for several years and there is a dissolution of the marriage and one child involved. After the dissolution there is a continuation of the farming and he would make a charitable gift using the assets of the farm to fund a trust. For the child, an insurance policy is purchased. He asked if in that case under this bill without the amendments, would the assets of that policy become a part of the elective estate of the divorced spouse at the time of death of the owner.

Mr. McLean said that if the person did not remarry, the divorced spouse would have no claim whatsoever to any of the estate.

REP. SOFT asked about the effect if the person had remarried for a period of five years.

Mr. McLean said the surviving spouse would have a claim on any assets of the estate by the percentage allowed. Depending on the allowance, the policy might or might not be affected.

REP. CURTISS asked about the allowance before people are subject to inheritance tax.

Mr. McGinnis said he thought she was confusing the federal estate tax with the state inheritance tax. Under the state inheritance tax law, legal descendants and spouses are exempt.

REP. CURTISS asked if the augmented insurance would push the amount up to make them liable under the federal provision. She understood that there was consideration to bring it down to \$200,000.

Mr. McGinnis said he had not understood how the augmented estate would impact the federal estate situation in terms of the present \$600,000 exclusion.

Professor Eck said if there was any impact, it would be beneficial in that it would not enlarge the estate of the decedent at all. Any tax relationship would benefit the spouse and the marital deduction and reduce the federal tax. He and REP. CURTISS continued to clarify this point.

{Tape: 2; Side: A; Approx. Counter: 34.8}

Closing by Sponsor:

SEN. BISHOP closed with remarks about other ways to circumvent problems in a second marriage. He also said that historically the intent has been to protect the surviving spouse. With the amendments, they would reverse that and he admonished the committee to remove the emotion from their deliberations by considering the benefits to an aging spouse versus the children. He felt that in most cases the other assets would be sufficient to take care of the elective share leaving insurance policies untouched.

HEARING ON SB 64

Opening Statement by Sponsor:

SEN. DEL GAGE, SD 43, said SB 64 was being presented by request of the Board of Crime Control to deal with Minors in Possession (MIP) offenses. The Senate was concerned that they were treating those who are 18 - 20 the same as those under 18 and they felt there was enough difference to segregate them. With the exception of section 6 all of the other parts of the bill existed

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/29/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority		✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee			✓
Rep. Brad Molnar		✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

TECHNICAL CORRECTIONS ACT
SENATE BILL NO. 132
COMMENTS

EXHIBIT 5
DATE 2/28/95
SB 132

[Note: The explanation of Senate Bill No. 132 which follows explains the Bill as introduced by Senators Bishop and Halligan. The following section-by-section explanation does not include a discussion of the amendments made in the Senate Judiciary Committee.]

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Section 1. Explanation of Technical Amendment.

The wording of §27-2-404 (2) differs from that §72-3-803(1). Both set time limits for commencing actions against a decedent's estate. The limit of §27-2-404(2) is one year after issuing letters testamentary. The primary limit of §72-3-803(1) is one year after the decedent's death. The amendment eliminates any conflict between the two sections by repealing §27-2-404(2).

Section 2. Explanation of Technical Amendment

This amendment to a definition conforms to the proposed technical amendment to §72-2-712.

Section 3. Explanation of Technical Amendment

This amendment deletes some extraneous words which were added as part of an amendment to Revised Article II of the Montana Uniform Probate Code adopted in the 1993 session.

Section 4. Explanation of Technical Amendment

As part of the overall reorganization of the elective share provisions, the provision indicating that the spouse's elective share is in addition to the various probate exemptions and allowances is moved from a separate section toward the end of the elective share provisions to a subsection of the first section. This relocation puts readers more readily on notice of this important provision.

Section 5. Explanation of Technical Amendment

This section is amended to clarify the types of property interests included in the augmented estate. The section is reorganized into more understandable paragraphs and sub-paragraphs and language is added to make more clear the amount included in the augmented estate in each category. The provision concerning joint tenancies is expanded to include nonseverable as well as severable joint tenancies because, even in a nonseverable joint tenancy, each joint tenant has an equal vote on whether to sell or sever the property.

Subsections (5) and (6) are shown as deleted (lined through) above, but in fact these subsections are merely moved to later sections. They are not actually deleted from this Part.

Section 6. Explanation of Technical Amendment

The technical amendments to this section merely account for a change in nomenclature.

Section 7. Explanation of Technical Amendment

§40-2-604 indicates that a premarital agreement is enforceable without consideration. The technical amendments to §72-2-224 make it clear that the same rule applies to a written waiver of the elective share.

Section 8. Explanation of Technical Amendment

While listed as a "new section," subsection (1) constitutes an amendment to §72-2-227(4) and subsection (2) constitutes an amendment to §72-2-222(6)(b). The technical amendments in this section amount merely to a switching of one section and another and changes in nomenclature.

Section 9. Explanation of Technical Amendment

This section is added by relocating § 72-2-222(5) without change.

Section 10. Explanation of Technical Amendment

The technical amendments to this section merely account for a change in nomenclature.

Section 11. Explanation of Technical Amendment

The technical amendments to this section merely account for changes in nomenclature and relocation of subsections.

Section 12. Explanation of Technical Amendment

Subsection (1) is amended to make it clear that any lapsed devise that passes under §72-2-614 to a child of the testator by a prior marriage, rather than only to a descendant of such a child. For example, suppose that G's will devised the residue of his estate "to my two children, A and B, in equal shares." A and B are children of G's prior marriage. G is survived by A and by G's new spouse, X. B predeceases G, without leaving any descendants who survived G by 120 hours. Under §72-2-614, B's half of the residue passes to G's child, A. A is a child of the testator's prior marriage but not a descendant of B. The amendment aligns the statutory language with the original intent, that is, that X's rights under §72-2-331 are to take an intestate share in that portion of G's estate not covered by the residuary clause.

Section 13. Explanation of Technical Amendment

Because subsection (3) only applies to the case of a child omitted solely because thought dead, the exceptions contained in subsection (2) need not be explicitly applicable to subsection (3), and making them explicitly applicable could cause confusion. Consequently, the technical amendment deletes the explicit application of the subsection (2) exceptions to subsection (3).

Section 14. Explanation of Technical Amendment

The technical amendment to this section simply removes a potential ambiguity.

Section 15. Explanation of Technical Amendment

Amendments to subsection (1) and (2). The exception of the Uniform TOD Security Registration Act (UTODSRA) from the 120 hour survival requirement was inserted because UTODSRA then made no provision for quickly successive deaths and was then being promoted to the Stock Transfer Association (NY) with the argument that transfers at death via TODSRA registration would be implemented with all of the simplicity of familiar reregistration requests made by survivors of joint tenancy registrations. At the time, discussion of extending the 120-hour survival requirement to joint tenancy registrations had barely begun, and language, now appearing in 72-2-712(1) had yet to be developed.

Now that UTODSRA has been enacted in a number of states and the Simultaneous Death Act revision has been finalized, the earlier concern has passed and the anomalous TODSRA exception to the 120 hour survival requirement can be, and should be, eliminated.

Amendments to subsection (4). The technical amendments to subsection (4) clarify the rule to be followed in cases in which the 120-hour requirement of survival is inapplicable.

Section 16. Explanation of Technical Amendment

After approval of the UPC Article II revisions, a question arose as to whether the drafters intended to include parties to joint accounts in financial institutions in the "anti-lapse" provision of §72-2-716. The answer was that joint tenancies and joint accounts were not considered to be appropriate vehicles for gifts at death to which "anti-lapse" should apply. However, the question provoked careful reading of §72-2-716 and relevant definitions of "beneficiary," "beneficiary designation" and "governing instrument" in §72-1-103(3), (4) and (20). In result, it was concluded that the approved text left the answer unclear and that language excluding joint account holders and joint tenants should be added to the section. Under UPC Article VI, "party" means one designated in an account as having a present right to payment from the account other than as a beneficiary or agent. Joint account holders own portions of the available balance in proportion to the net contributions of each, meaning that one might own 100% while the other or others own nothing. On a party's death, any ownership interest passes to surviving parties. Technically, the account is a "governing instrument" and each party is a potential death beneficiary of another party's beneficial interest. The definitions applicable to §72-2-716 plus UPC's treatment of ownership of joint accounts generate an implied death benefit situation that might, but should not, be subject to anti-lapse provisions intended for other contractual death benefits. Anti-lapse application to joint and survivor accounts in banks and similar organizations is deemed unsuitable because, unlike other death benefits within §72-2-716, the joint account appears as a form of present divided ownership, rather than as a likely-to-be overlooked death benefit appended to one's solely owned asset. TOD accounts and "Totten trust" accounts differ and remain subject to the anti-lapse provisions in this section.

Section 17. Explanation of Technical Amendment

Subsection (5) is added to clarify the passing of the property in cases in which the future interest is created by the exercise of a power of appointment.

Section 18. Explanation of Technical Amendment

This technical amendment makes two changes.

The phrase "if any" is added to subsection (3) to clarify the point that, under per stirpes, the initial division of the estate is made at the children generation even if no child survives the ancestor.

Subsection (4) is added. During the 1993 legislative session, the House Judiciary Committee voted to retain the existing statute's definition of "representation" for the intestacy

provisions of revised Article II. This technical amendment extends the same definition of "representation" to governing instruments.

Section 19. Explanation of Technical Amendment

This section is amended to make it applicable to present as well as future interests in favor of heirs and the like. Application of this section to present interests codifies the position of the Restatement (Second) of Property § 29.4 cmts. c & g (1987).

Section 20. Explanation of Technical Amendment

Subsection (4)(a) and (b) are amended to clarify the effect of a disclaimer in a case in which G, who died intestate, had two children, A and B. A had one child, X; B had two children, Y and Z. B actually predeceased G. A survived G, but disclaimed. The technical amendments make it clear that X takes A's disclaimed one-half by providing that if "the descendants of the disclaimant would share in the disclaimed interest by representation . . . were the disclaimant to predecease the decedent . . . , then the disclaimed interest passes by representation . . . to the descendants of the disclaimant who survive the decedent" In this case, were A actually to have predeceased G, A's descendants would share in the disclaimed interest under the representation system employed in the Code, but would not "take" all of the disclaimed interest. The amendments clarify the point that the fact that X would share in the disclaimed interest is enough to give that disclaimed interest to X as a result of A's disclaimer.

Section 21. Explanation of Technical Amendment

Subsection (5) is amended to make it clear that the antilapse statute applies in appropriate cases in which the killer is treated as having disclaimed.

Section 22. Explanation of Technical Amendment

Subsection (4) is amended to make it clear that the antilapse statute applies in appropriate cases in which the divorced individual or relative is treated as having disclaimed.

Section 23. Explanation of Technical Amendment

The technical amendments to this section accomplish several purposes. The original description of an honorary trust was too broad because, taken literally, it applied to regular trusts for family members. The revision narrows the scope to true honorary trusts.

Several of the provisions previously applicable only to trusts for pets are equally appropriate for honorary trusts, and the

amendments extend those provisions to honorary trusts.

Because some pet animals live for more than 21 years, the 21-year limitation is removed. The removal of the 21-year limitation necessitates restricting trusts for pets to pets living when the trust was created, and excluding the pet's future offspring.

Section 24. Explanation of Technical Amendment

See explanation to section 25.

Section 25. Explanation of Technical Amendment

A 1975 Technical Amendment added former exception (d) to this section's 3 year bar on probate and appointment proceedings. The added exception permits use of familiar procedures to establish a devise by an unprobated will as previously permitted by exception to §72-3-102. The original §72-3-102 exception permitted proof, otherwise than via a probate proceeding, of wills that were not probated within three years following death were not probated within three years following death because of specified circumstances tending to justify the failure to act in the permitted time. Included was the situation where a will favored persons already in possession of devised land who, possibly because of erroneous assumption of good title by right of survivorship or by undelivered deed, saw no need to probate the will. Another excused failure to probate a will was when a decedent's successors mistakenly believed there were no assets warranting use of probate procedures and originally made no claim to an asset later discovered to have belonged to the decedent.

Experience has taught that specification of limited circumstances excusing timely probate of a will was a mistake. As originally framed, the §72-3-122 exceptions as derived from original §72-3-102 bristled with potential proof problems that invited litigation. Also, it is far from clear that reasons behind the original UPC policy of definite settlement of certain unopened estates within an arbitrary time period served any policy important enough to block discovery and effectuation of duly executed wills.

As reported in 1975 Ariz. St. L. J. 478, four (Arizona, Montana, Nebraska and Utah) of the original eleven UPC states altered UPC §3-108 (72-3-122) so as to permit late limited proceedings in cases where no probate of a will or administration had occurred during the three year period. Colorado also altered its version of UPC §3-108 to achieve similar results. These deviations from the original official text demonstrate that late-offered wills and tardy administrations occur frequently and that UPC's effort to classify such estates as intestate unless original UPC §3-102's exception applies is not acceptable to important numbers of practicing attorneys. Additional resistance to original UPC §3-108 (72-3-122) developed in connection with an aborted, 1991

effort to enact UPC in Mississippi. Mineral lease buyers protested new complications affected their familiar methods of dealing with intestate successors of unadministered estates. The effort to respond to these concerns by reference to UPC §3-108(4) proved to be more complicated than useful.

JEB-UPC recommends substitution of the Arizona exception to §72-3-122 for existing (d). If this change is approved, the language beginning with "except" and continuing to the end of § 72-3-102 also can be deleted and revision of that section as shown above is also recommended. The changes have the practical effect of removing the time bar on proceedings to establish wills, but leave the three year period operative as a time limit on contests seeking to upset a prior informal probate, including efforts to probate a will governing an estate previously opened and administered as intestate. Finally, the new exception means that informal appointment proceedings can be used to generate title-perfecting paperwork in successors, whether testate or intestate, when no probate or appointment proceeding occurred within three years. Former §72-3-122 permitted this result, but only in the narrowly described and troublesome to prove situations deemed sufficient to excuse timely proceedings.

An additional problem with §72-3-122 that is not corrected by the Arizona adaptation may arise when a testator's will is not presented for probate either because all successors were adults who agreed to administer the estate as intestate, or because the will was not discovered in time to avoid an intestacy distribution and settlement. To this, add that a will or trust of another person directs distribution of assets as of the end of a life estate to appointees of a power of appointment given to testator and exercised by the unprobated will. Or, the other person's dispositive instrument directs distribution to beneficiaries of testator's residuary estate. New (e) is recommended to permit a testacy proceeding for testator's will even though testator's estate has been administered within the three year period. Note, too, that unlike (d), it does not produce appointment of a personal representative for testator's estate, but only permits establishment of the will for the sole purpose of directing devolution of property of a person other than the testator.

Section 26. Explanation of Technical Amendment

The recommended changes clarify text that was made unclear by Committee of the Whole substitution of "or" for "and". Litigation in Nebraska focused attention on the problem.

Section 27. Explanation of Technical Amendment

1993 technical amendments to this and the following section clarified original intention that the described procedure would be available to resolve controversies other than those concerning a

will.

Section 28. Explanation of Technical Amendment

See the explanation to section 27.

Section 29. Explanation of Technical Amendment

The technical amendments to this and the following two sections clarify that a party to an account may alter the terms of the account, including the addition of another party to the account and the removal of an existing party. For example, a party to a multiple-party account may alter the account to a single-party account.

Section 30. Explanation of Technical Amendment

See the explanation to section 29.

Section 31. Explanation of Technical Amendment

See the explanation to section 29.

Section 32. Explanation of Technical Amendment

Former law excluded transfers made within three years of the transferor's death from the inheritance tax if the decedent was not required to file any federal gift tax return for the year with respect to the gift.

The wording of the exception led to an unfortunate result. A donor could make a gift of \$10,000 (or any smaller value) and none of the gift was subject to inheritance tax. However, if the donor made a gift of \$10,001 (or any amount greater than \$10,000), the entire gift was subject to the inheritance tax if the gift was made within three years of death.

The technical amendment would modify the result. To the extent that the gift qualifies for annual exclusion to the federal gift tax (currently the first \$10,000 of a present interest gift), the transfer is not subject to the inheritance tax. This technical amendment will negate the result in Estate of Joseph F. Langendorf 863 P2d 434 (1993).

Section 33. Explanation of Technical Amendment

See the explanation to section 32.

Section 34. Explanation of Technical Amendment

The deleted phrase is unnecessary because no person could effectively hold a power to revoke unless the trust is revocable.

EXHIBIT 5
DATE 2-28-95
3B132

Section 35. Explanation of Technical Amendment

This technical amendment clearly indicates that the trustee's nonliability for following directions applies only when the power holder is competent. Thus, this section applies the same standard found in §72-33-701.

Section 36. Explanation of Technical Amendment

This technical amendment clarifies that a trustee is relieved from liability for failing to following the directions of a person holding a power to revoke if that power holder is incompetent as defined in the trust instrument. In absence of such a definition, the trustee is relieved from liability if the trustee reasonably believes the power holder to be incompetent.

SENATE BILL 132

EXHIBIT 6
DATE 2/28/95
SB 132

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As introduced, this will was primarily a "Technical Corrections" Bill designed to remove potential ambiguities.

Senate action removed life insurance proceeds owned by the insured from any claim by a surviving spouse.

Background

Since Montana has been a state, the legislature has enacted some form of protection to a surviving spouse from complete disinheritance. The legislation has evolved over time to insure effectiveness and to defeat attempts to avoid the legislative rules.

Early statutes required a certain fraction of property passing by will to be subject to the spouse's claim. In New York, a husband attempted an "end run" around such a statute by placing all of his assets in a revocable trust which would distribute his assets after his death. After substantial litigation, the surviving spouse was able to convince a court that assets of a revocable trust should also be entitled to a surviving spouse's claim.

In 1974, this legislature enacted the first version of the Uniform Probate Code (1969) which was designed to avoid this and other attempts to avoid a spouse's family obligations:

- revocable trusts
- joint tenancy
- gifts with retained life estates
- death-bed gifts

The legislature did not wait for any specified number of cases to be litigated. It nipped these problems in the bud and reaffirmed the responsibilities husbands and wives have to each other.

In 1993, this legislature enacted the 1990 version of the Uniform Probate Code which went further to close loopholes. One change is that life insurance owned by the decedent-insured was added to the assets subject to claim by the surviving spouse.

Insurance Industry Arguments and Responses

On the Senate side this session, the life insurance industry advanced the following arguments:

1. The rights of a contract should be honored.

Response: This legislature and the courts have repeatedly found some contracts to be unenforceable because they are contrary to public policy. One such contract is a contract which would disinherit the surviving spouse.

2. The National Conference of Commissioners on Uniform Laws cannot document the number of times life insurance is being used as a devise to avoid a surviving spouse her rights.

Response: True. But, this legislature has often taken the lead to anticipate problems.

3. The inclusion of life insurance in this provision means than an impersonal court will determine who will receive the benefits of life insurance, instead of the owner of the policy.

Response: While courts are the ultimate forums for the resolution of any dispute under our legislature's statutes, there is no need to expect any increase of litigation. Since the UPC was adopted in 1974, only 6 Montana Supreme Court cases have been annotated under the spousal protection provisions. Since the 1993 legislative action, my search on Westlaw indicates that there are no Montana Supreme Court cases.

4. These provisions adversely affect "keyman" insurance.

Response: False.

5. These provisions adversely affect insurance used with "buy-sell" agreements.

Response: False.

6. These provisions adversely affect insurance owned by charities for tax reasons.

Response: False.

7. The North Dakota House of Representatives is in the process of adopting the revised UPC without including life insurance in the spousal protection provisions.

Response: True. But should North Dakota be our model? What is motivating the North Dakota insurance lobby? Is it motivated in part by a potential marketing tool to the unhappily marrieds who

wish to avoid their family responsibilities? Will a North Dakota agent be able to say: "I can sell you an asset (life insurance) which is the only asset that is not subject to a claim by your wife upon your death?"

Conclusion

Life insurance is one of the most important forms of wealth transmission in the U.S.

Challenge: NAME ONE PRINCIPLED REASON WHY SHOULD LIFE INSURANCE BE PERMITTED TO BE USED TO AVOID ONE'S FAMILY RESPONSIBILITIES? WHY SHOULD LIFE INSURANCE BE TREATED DIFFERENTLY FROM ALL OTHER ASSETS? WHAT IS UNIQUE ABOUT LIFE INSURANCE?

EXHIBIT 6
DATE 2-28-95
X SB 132

EXAMPLES

The following are examples of application of a spouse's right to assets of a deceased spouse. All of the examples are based upon a marriage of 15 or more years. Under such a marriage, the surviving spouse is entitled to 50% of the assets. In all of the examples which follow, the husband (H) predeceases his wife (W).

Example 1

Assets

\$100,000 house goes to W by will
100,000 life insurance proceeds on policy owned by H. The beneficiary (B) is someone other than W.
0 assets in W's name at the time of H's death.
\$200,000

Results after 1993 Legislation. W has a right to 50% of \$200,000 (house and life insurance). Her right to \$100,000 is fully satisfied since she receives a \$100,000 house. B receives the \$100,000 of life insurance proceeds.

[The result under the 1995 Senate's action: Only the \$100,000 house is included in the calculations. The surviving spouse would still be entitled to receive it. Thus, the result is the same.]

Example 2

[Same as Example 1 except the \$100,000 life insurance policy has been increased to a \$500,000 policy.]

Assets:

\$100,000 house goes to W by will
500,000 life insurance proceeds on policy owned by H. The beneficiary (B) is someone other than W.
0 assets in W's name at the time of H's death.
\$600,000

Results after 1993 Legislation. W has a right to 50% of \$600,000 (house and life insurance). In other words, she is entitled to \$300,000 of assets. She is credited with having received \$100,000 (the house). She is also entitled to receive \$200,000 of the \$500,000 life insurance proceeds. B is entitled to receive the remaining \$300,000 of life insurance proceeds.

[The result under the 1995 Senate's action: Only the \$100,000 house is included in the calculations. The surviving spouse

would still be entitled to receive it. B would receive the full \$500,000 life insurance benefits.]

EXHIBIT 6

DATE 2-28-95

Example 3

1 SB 132

[Same as Example 2 except a second policy of life insurance has been added. This second policy is payable to W. That policy provides \$20,000 in proceeds.]

Assets:

\$100,000	house goes to W by will
500,000	life insurance proceeds on policy owned by H. The beneficiary (B) is someone other than W.
20,000	life insurance proceeds on policy owned by H. W is the beneficiary
<u>0</u>	assets in W's name at the time of H's death.
\$620,000	

Results after 1993 Legislation. W has a right to 50% of \$620,000 (house and life insurance policies). Her right to receive \$310,000 is partially satisfied because she is credited with having received \$100,000 (the house) and the \$20,000 life insurance proceeds payable to her. She is also entitled to receive \$190,000 of the \$500,000 life insurance proceeds. B is entitled to receive the remaining \$310,000 of life insurance proceeds.

[The result under the 1995 Senate's action: Only the \$100,000 house and the \$20,000 of insurance payable to the surviving spouse are included in the calculations. The surviving spouse would receive these \$120,000 of assets. B would receive the full \$500,000 life insurance benefits. Under the Senate's action, life insurance payable to the surviving spouse is included in the calculations and "counts" against her. Life insurance payable to others is not counted.]

Example 4

[Prior to death, a bitter husband takes all of his assets, converts them to cash, and buys a \$500,000 life insurance policy. He makes the policy payable to someone other than W.]

Assets:

500,000	life insurance proceeds on policy owned by H. The beneficiary (B) is someone other than W.
<u>0</u>	assets in W's name at the time of H's death.
\$500,000	

Results after 1993 Legislation. W has a right to 50% of \$500,000. She is entitled to receive \$250,000 of the \$500,000 life insurance proceeds. B is entitled to receive the remaining \$250,000 of life insurance proceeds.

[The result under the 1995 Senate's action: None of the insurance is included in the calculations. The surviving spouse would receive nothing. B would receive the full \$500,000 life insurance benefits.]

Example 5

Assets

\$100,000	house goes to W by will
100,000	life insurance proceeds on policy owned by H. The beneficiary (B) is someone other than W.
50,000	life insurance proceeds on policy owned by H's favorite charity (C). The charity is the beneficiary of the policy.
<u>0</u>	assets in W's name at the time of H's death.
\$200,000	assets included in the calculations. The policy owned by the charity is not counted.

Results after 1993 Legislation. W has a right to 50% of \$200,000 (house and life insurance owned by H). Her right to \$100,000 is fully satisfied since she receives a \$100,000 house. B receives the \$100,000 of life insurance proceeds. C receives the \$50,000 of life insurance proceeds.

[The result under the 1995 Senate's action: Only the \$100,000 house is included in the calculations. The surviving spouse would still be entitled to receive it. Thus, the result is the same.]

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RESPONSE TO THE LIFE INSURANCE INDUSTRY

EXHIBIT 7
DATE 2/28/95
SB 132

The Joint Editorial Board for the Uniform Probate Code (JEB) has become aware of lobbying efforts against the Uniform Probate Code by the Life Insurance Industry, spearheaded by the American Council of Life Insurance (ACLI). The JEB issues this statement in response to the Life Insurance Industry's opposition. The Life Insurance Industry's opposition must be understood for what it is--not a principled argument on the merits, but a claim by a powerful industry lobby for special treatment for its industry's products. Regrettably, in their anti-UPC lobbying efforts, the ACLI and other representatives of the Life Insurance Industry often misrepresent, exaggerate, and distort the true meaning and significance of the UPC provisions to which they object.

The main targets of the Life Insurance Industry are the UPC inclusion of life insurance payable to third parties as part of the property that is subject to the elective share of the surviving spouse and the inclusion of life insurance and other nonprobate transfers in the UPC's rules of construction. The JEB observes at the outset that the American Law Institute, in the Restatement (Second) of Property (1992), has also taken the position that life insurance payable to third parties should be subject to the surviving spouse's elective share and that rules of construction for both probate and nonprobate transfers (including life insurance) should be uniform. *Consequently, state legislators should be aware that both the Uniform Law Conference and the American Law Institute, the two premier and disinterested national organizations devoted to law reform, agree on these two issues.*

The UPC Protects Insurance Companies (and Other Payors) from Liability. Before discussing the merits of the UPC's position on these two issues, the JEB wishes to point out that the UPC (but not the Restatement) goes out of its way to protect insurance companies from liability. The UPC contains elaborate payor protection provisions. The term "payor" is a defined term that includes life insurance companies. Insurance companies (and other "payors") are protected from liability if they pay to the designated beneficiaries before receiving notice of a contrary claim. If they receive notice of a contrary claim before making payment, they can disentangle themselves from the dispute (and avoid liability) by paying the proceeds into court. Consequently, the UPC does not impose administrative costs on insurance companies (or other payors). Insurance companies (or other payors) need not expend resources on investigating the validity of claims under the elective share or the rules of construction. Cases in which a contrary claim is filed will be small in number. They will be the exception, not the rule. In those isolated cases, the courts, not the insurance companies, are charged with determining who is ultimately entitled to receive the insurance proceeds. For additional discussion of the UPC's payor protection provisions and related issues, see Attachment No. 5.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

JOINT EDITORIAL BOARD FOR UNIFORM PROBATE CODE

SUMMARY OF RESPONSE TO THE LIFE INSURANCE INDUSTRY

- Both the Uniform Law Conference (in the UPC) and the American Law Institute (in the Restatement, Second, of Property: Donative Transfers), the two premier and disinterested national organizations devoted to law reform, agree that life insurance should be included in the property that is subject to the elective share of the surviving spouse and that life insurance and other nonprobate transfers should be subject to the same rules of construction.
- The UPC protects insurance companies (and other payors) from liability if they pay to the designated beneficiaries before receiving notice of a contrary claim. If they receive notice of a contrary claim before making payment, they can disentangle themselves from the dispute (and avoid liability) by paying the proceeds into court. Consequently, the UPC does not impose administrative costs on insurance companies (or other payors). Insurance companies (or other payors) need not expend resources on investigating the validity of claims under the elective share or the rules of construction.
- Cases in which a contrary claim is filed will be small in number. They will be the exception, not the rule. In those isolated cases, the courts, not the insurance companies, are charged with determining who is ultimately entitled to receive the insurance proceeds.
- Under the UPC's elective share system, the *most* that the surviving spouse could take from life insurance beneficiaries is 50% of the proceeds. In most cases, the surviving spouse will be entitled to substantially less.
- If the public policy of this country is to protect surviving spouses—mostly elderly widows—from disinheritance by will, there is no defensible case for allowing disinheritance by will substitutes (nonprobate transfers), which are functional equivalents of wills. Recently, federal law recognized this by protecting surviving spouses from being deprived of employee death benefits under plans covered by the Employee Retirement Income Security Act (ERISA), as amended by the Retirement Equity Act (REACT).
- There is nothing unique about life insurance. The purchase of life insurance by the decedent spouse is a way of shifting the decedent's assets into one of a variety of forms of investment. There is no meritorious case for treating one form of investment more favorably than other forms of investment.
- There is a profound parallel between the elective share of the surviving spouse and the federal estate tax. The federal estate tax taxes both probate and nonprobate transfers (including life insurance). The reason is simple. If the federal estate tax only taxed probate transfers, the tax would be ineffective because people would swarm to the nonprobate transfers. If the federal estate tax taxed both probate and nonprobate transfers, but left out one form of nonprobate transfer—life insurance—people would use life insurance to avoid the estate tax. The same point holds true for the elective share. If life insurance were the only exempted nonprobate transfer, life insurance would be the estate-depleting transfer of choice for people determined to disinherit their surviving spouses.
- Life insurance is one of the most important forms of wealth transmission in the United States. Life

insurance has become the principal last will and testament of our legal system. If the elective share is to be effective, life insurance must not be exempted.

- The UPC's elective share, as revised in 1990, has been endorsed by the American Association of Retired Persons and by the Consumer Federation of America.
- The UPC has always covered nonprobate transfers and other matters extending beyond decedents' estates. UPC coverage of nonprobate transfers (including life insurance) is not new.
- One of the themes of the 1990 revisions of the UPC was further to unify the law of probate and nonprobate transfers, so that all donative transfers, whether by will or will substitute, would be covered by the same rules of construction.
- One of the rules of construction that the UPC extends to nonprobate transfers (including life insurance) is a provision on "antilapse." The main goal of antilapse statutes is to protect against an unintended disinheritance of the decedent's grandchildren. Antilapse statutes are founded on common intention—on the conviction, borne out by experience, that most decedents, if they had thought about the possibility of an unusual order of deaths, would have provided that a deceased child's share should go to the deceased child's issue. Antilapse statutes do not, however, force this result on donors: if there is persuasive evidence that the decedent did think about the possibility and deliberately provided that the deceased child's issue not take, then that intent is honored.
- An antilapse statute for life insurance and similar beneficiary plans is especially needed. Life insurance is often taken out early in life when the policyholder is a young adult, fairly recently married, and with young children. This is a time of life when the parent is least likely to anticipate the possibility of an unusual order of deaths.
- The problem is compounded by the fact that life insurance companies and similar payor institutions typically offer a fairly rigid set of beneficiary options that usually do not include the one that most people would choose were it offered--the one designating a deceased child's issue to take the share that the deceased child would have taken.
- The option that most insurance companies give their policyholders is one providing that the deceased child's share goes to the other (surviving) children, not to the deceased child's issue. For the administrative convenience of the insurance companies, the Life Insurance Industry promulgates the false idea that this anti-grandchild option is what most policyholders want.
- The Life Insurance Industry often misrepresents, exaggerates, and distorts the true meaning and significance of the UPC provisions to which they object.

EXHIBIT 9
DATE 2/28/95
SB 132

February 24, 1995
1400 Gerald
Missoula, Mt. 59801

House Judiciary Committee
Helena, Montana

Members of the Committee,

I am a Roman Catholic priest of the diocese of Helena for 34 years. I am currently the pastor of Christ the King parish in Missoula.

I am writing to you about the proposed legislation which seeks to change the present law that an estate cannot entirely disinherit a spouse.

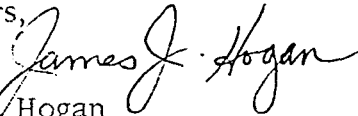
I have been involved with many families as a parish priest for 34 years. I have known and been touched by the pain and turmoil which families so often encounter at the time of death and the financial difficulties of many widows.

There are significant moral issues of justice involved in this legislation. I think that the proposed legislation asking that life insurance be excluded from the surviving spouses right of election is unjust.

"all assets, including life insurance, be subject to the surviving spouses right of election".

Thank you for your consideration.

Sincerely yours,



Father James J. Hogan
Pastor / Christ the King

POSITION PAPER
S.B. 132 (Probate Code revisions)
American Council of Life Insurance
Denny Moreen

S.B. 132 is a bill to revise the Probate Code. The code was extensively redone in 1993. This is a "Uniform" law redone at the behest of the Uniform Law Commissioners.

If a surviving spouse feels like he or she is disinherited, he or she can demand to take what is called the "elective share." To determine what that share is, the court must look at all the property that transferred through the estate and all property that transferred outside the estate (gifts before death, property held in joint tenancy, etc.). All of these are combined and the total is called the "augmented estate." Before 1993 life insurance was not included in the "augmented estate."

The 1993 recodification included life insurance in the "augmented estate." Life insurance companies feel this interferes with the basic contract of life insurance, immediate payment to the beneficiary. Insurance purchased for an adult disabled child would be held up if the spouse decided to request the elective share (even though the child may eventually get most or all of the proceeds of the policy).

It is for this reason that we proposed amendments to the bill in Senate Judiciary which remove life insurance from the "augmented estate." The amendments were adopted by Senate Judiciary and the bill, with the amendments, passed the Senate. (The amendments are the striking on page 2, lines 23, 26, 27, 30, page 12, lines 6 through 15, and page 13, lines 13 through 17; the capitalized underlining on page 14, lines 7 through 12; the striking on page 15, lines 5 through 7; the capitalized underlining on page 15, lines 16 through 18.)

The argument against the amendments and in favor of having life insurance in the "augmented estate" is that there is a chance that the deceased

could have bought a substantial life insurance policy shortly before death and named someone other than the spouse as beneficiary which would adversely affect the surviving spouse. The uniform commissions were not presented with any example of this happening when they included life insurance. No one that I have spoken to has ever encountered such a problem except for the estate attorney from Great Falls who testified at the Senate Judiciary Committee hearing that she knew of one such case. She also testified that the "augmented estate" comes into play very seldom. Therefore the question is, is it worthwhile to jeopardize every life insurance policy to prevent the very rare anomaly? We believe the answer is no. North Dakota agrees. It is enacting these very amendments.

(Our amendments also change the procedure and notice provisions for life insurance companies relating to when the deceased is murdered and when the spouse is divorced at the time of death. [The spouse is not a valid beneficiary under those circumstances.] These are not controversial amendments as far as we know. Those amendments are the capitalized underlining contained on pages 19, 20, 42, 43, 44, 46, and 47. They are not related to the "augmented estate" amendments.)

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2/28/95

BILL NO. SB 132 SPONSOR(S) Sen. Bishop

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>R Bruce McLean</u>	<u>DOR</u>	☒	
<u>Dan McLean</u>	<u>State Bar of MT</u>	☒	
<u>Ed Ech</u>	<u>Uniform Law</u>	☒	
<u>Doughanay</u>	<u>MTALL (Life Underwriters)</u>	☒ w/ Amendments	
<u>Joan Himel</u>	<u>MT Credit Union League</u>	☒	
<u>Rene Alberts</u>	<u>MT. Assoc. of REALTORS</u>	☒ Monitor	
<u>Guiguline Benmarks</u>	<u>Am. Ins. Assoc.</u>	☒ Amended	
<u>Roger McGlenn</u>	<u>INDEPENDENT INS. AGENTS ASSOC OF MT</u>	☒	
<u>Denny Moreen</u>	<u>ACLI</u>	☒ AS Amended	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORM
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

enforcement to pick up the license. Dispatch would have the information that that license is revoked on their computer system if the person is stopped by law enforcement.

REP. SOFT asked if it was correct that unless the person was picked up on a violation, they would continue to drive.

Ms. Nordlund said that any person can violate the revocation order or suspension order and continue to drive unlawfully. The fact that they have a physical drivers license in their possession, if that license is invalid, gives them no privilege on the highways.

REP. SOFT restated his question and she agreed that was reality.

REP. SOFT asked about the provision on page 4, line 15 for imprisonment if they are picked up with a revoked drivers license.

Ms. Nordlund said it referred to the county jail.

REP. SMITH asked if there was a fiscal note on SB 185.

Ms. Nordlund said there was not because they were talking about first class postage. If there was a concern about jail time, the committee might want to see what the impact of that would be.

REP. SMITH asked what percent per year would warrant the incarceration period provided for in this bill.

Ms. Nordlund did not have that information but said they would provide it.

Closing by Sponsor:

REP. VAN VALKENBURG closed with the fiscal note information that costs would be absorbed within the department and there would be no fiscal impact on state government.

{Tape: 2; Side: A; Approx. Counter: 12.9}

EXECUTIVE ACTION ON SB 132

Motion: REP. GRIMES MOVED SB 132 BE CONCURRED IN.

{Tape: 2; Side: A; Approx. Counter: 17.9}

Discussion: REP. MC GEE stated he would not want to see key man insurance jeopardized. He was not convinced that the current language in the bill would address both the concerns of the spouse and also the key man.

REP. KOTTEL said that the bill did address both issues, but the proposed amendments would delete the exemptions on page 15, lines 16 - 18.

REP. MC GEE understood that, but understood that by putting them in the spouse would not be protected because it was not part of the augmented estate.

REP. KOTTEL said it was clear to her in terms of the augmented estate that the life insurance and other payable-on-death benefits would not be included in the augmented estate. She said that his concern, that the spouses elected share could come in and take part of the benefit of insurance, was cleaned up by this language. Because it would not become part of the augmented estate, any spouse would lose their right of elected share to those assets.

REP. MC GEE said his question was in excluding all life insurance, from the augmented estate, would that eliminate the policy on the spouse.

REP. KOTTEL said that was incorrect, the spouse would be named as the beneficiary.

REP. HURDLE stated that she strongly believed that when a person buys a life insurance policy and names a beneficiary, that beneficiary ought to receive the benefit without it going through probate. She believed that the Senate amendments did that. She supported the bill as amended.

REP. SMITH asked if this covered credit life.

REP. KOTTEL said it would without the amendments.

REP. SMITH asked if the home mortgage had a credit life policy with the beneficiary as someone else, would the spouse then lose the home.

REP. KOTTEL said that was incorrect, that it was just the opposite. The credit life would pay the creditor off so that the spouse would get the asset free of debt.

REP. ELLEN BERGMAN asked if the amendment put in or took out the insurance from the augmented estate.

CHAIRMAN CLARK said it would take it out.

REP. MC GEE stated the following hypothetical question:

"I have two life insurance policies, one is made out that the beneficiary is my wife and the other is made out that the beneficiary is my company, because I'm a key man, and then I die. Without the Senate amendments, as I understand

it, my wife can go after the life insurance that is reserved and specifically identified for my corporation."

CHAIRMAN CLARK said that was true prior to the Senate amendments.

REP. KOTTEL said that this is the spouse's right to an elective share based on how long they had been married. This bill attempted to look at the augmented estate rather than the probate estate. She proceeded to explain the process of arriving at the value of the augmented estate and the ramifications which might require the addition of the life insurance policies.

REP. ANDERSON had a question on pages 43 and 47 of the bill concerning the definition of a bona fide purchaser and why it would change.

Denny Moreen, without objection from the committee, answered that those changes did not relate to the questions with regard to life insurance. They related to circumstances where there had been a murder of the deceased or the spouse had been divorced from the deceased. In those circumstances, the designation to the spouse for the transfer of property wouldn't necessarily apply. This is a process to give notice to third parties so that the property isn't automatically transferred to the surviving spouse. The section was changed because under the old Uniformed Probate Code, it was a term which was used in regard to those things. A body of law has been established with regard to that term and in some states removing that "bona fide" would cause problems because it has been a term of art. The idea was to put the uniformed law in conformance with what happens in that body of law.

REP. ANDERSON asked if under the old Uniformed Probate Code it took on a meaning through case law.

Mr. Moreen said that was his understanding.

REP. ANDERSON asked him to address the Senate amendment on lines 17 and 18.

Mr. Moreen said that section provided for a circumstance where the deceased had been murdered or the surviving spouse is divorced, and if federal law affects the transfer of property, even though this section would be pre-empted by the federal law, the person would still have to turn the property back to the person who should get it under Montana's probate. The section with the amendment, however, said that wouldn't apply to those things which are controlled by the federal retirement laws.

Vote: The motion carried unanimously by voice vote.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/2/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar		✓	
Rep. Debbie Shea	✓	8:45 ✓	
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 3, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 132 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Anderson

mm
3/3

Committee Vote:
Yes 17, No 0.

501426SC.Hbk

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By CHAIRMAN JOHN HARP, on February 13, 1995, at
12:00 p.m.

ROLL CALL

Members Present:

Sen. John G. Harp, Chairman (R)
Sen. Robert "Bob" Brown, Vice Chairman (R)
Sen. Gary C. Aklestad (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Bruce D. Crippen (R)
Sen. Ethel M. Harding (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Judy H. Jacobson (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None.

Members Absent: Senator J. Jacobson
Senator Fred Van Valkenburg

Staff Present: Greg Petesch, Legislative Council
Fredella Haab, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 132

HEARING ON SB 132

CHAIRMAN HARP said discussion today would be on SB 132 that was in the Senate Judiciary Committee and introduced by SENATOR AL BISHOP relating to estates and trusts. SENATOR CRIPPEN had moved the bill be referred to the Rules Committee based on a new rule contained in Section 40-1180. The new rule was passed this session dealing with the contingency voidance. There was some discussion this bill might have a reduction in revenue and with that reduction in revenue the chairman of the Judiciary Committee was concerned that it may need a stipulation - a contingency voidance.

SENATOR CRIPPEN announced that for the record, the bill before them had been passed out by the Judiciary Committee and recommended Do Pass As Amended and it does have the contingency avoidance provision in it now. He said the reason it was done this way was because he didn't want to see the bill back before the Judiciary Committee. No matter what this committee does, the bill is in position to proceed further. If this committee wants to leave that in, it goes right on out - if they want to amend it, they have the power to amend it or refer it to the floor.

CHAIRMAN HARP stated on Page 8 of 8, page 55 line 15 that the new section was there. He inquired if there was a fiscal note?

SENATOR CRIPPEN replied he thought there was a fiscal note.

SENATOR BISHOP stated they had a revenue employee, Bruce McKinnis, testify and he estimated that there would be somewhere between a \$150,000 to \$300,000 impact. He contended that is like throwing darts at the board on the wall.

SENATOR AKLESTAD remarked he didn't know how you could know where Mr. McKinnis came up with the \$150,000 to \$300,000. How are you to know what the impact it would have? With the contingency avoidance language in there, if was followed to the letter of the law what you do with this bill?

CHAIRMAN HARP asked what would happen to this bill.

SENATOR AKLESTAD questioned the language in the bill because the title was so off.

SENATOR CRIPPEN maintained the question before them is, if the contingency avoidance provision pertains to the entire bill, or can there be a separate clause added to it that pertains only to that portion of the bill that was amended which dealt with the reduction of the revenue. The rest of the bill could continue on its way if, in fact, it was not a reduction of expenditures per the requirement of the contingency avoidance requirement. That was the other question before this committee.

CHAIRMAN HARP asked GREG PETESCH if that were possible.

GREG PETESCH stated the contingency avoidance provision, if it is in a bill and if a corresponding reduction in spending is not made in House Bill 2, prohibits the bill from being transmitted to the Governor for enactment. The Governor cannot sign a portion of the bill. He signs the whole bill. He was of the opinion that this provision was permissive and only placed in bills that the body desires it to be placed in. If it is in the bill, it is in the whole bill.

SENATOR AKLESTAD declared just the title would give an indication that they would not know the fiscal impact this session. All of these things are too variable.

SENATOR DOHERTY commented that even if the Governor wanted to mandatory veto a portion of the bill that might have the reduction in revenue, and we hadn't identified the corresponding cut, the Governor would not be able to do that because it would not reach his desk.

CHAIRMAN HARP stated that it could not be transmitted.

SENATOR BISHOP explained this could be a part that causes a fiscal impact, and they don't want to lose the bill. We would like to keep it in. The whole bill is a lot more important than that one division.

SENATOR CRIPPEN commented he agreed with GREG PETESCH on his interpretation because of the rules. He thought the rules clearly refer to the bill as the whole. The question he had was what constitutes a reduction in expenditures? How do we make that determination?

GREG PETESCH stated that he believed the rule as written required the reduction in the appropriation bill to match the reduction in revenue in the bill that contains the contingency avoidance provision because it speaks to an identified corresponding reduction.

SENATOR CRIPPEN inquired if as an example, when we get HB 2 coming through and you see some reductions and you have one of these bills outstanding in limbo, can a motion be made at that time to say that you needed \$300,000, and there was \$10 million, can you say that \$300,000 of the \$10 million was to correspond to SB 132. Can it be done at that time? In fact it's the only time it can be done. It is probably one of the major times it would be done.

GREG PETESCH stated he thought it was going to behoove both houses to keep a list of bills that contain contingent avoidance provisions to take action at your opportunities.

CHAIRMAN HARP asked for the wishes of the committee.

SENATOR AKLESTAD stated his problem of leaving the language in is that at that point of time in coming to HB 2, what figure would be used, if you have a figure, and that is what we should have. His question was whether the language should be included because there is not a figure, and we will not know what that figure will be this session.

CHAIRMAN HARP stated this was a moving target. He wondered how many people do we know that are going to die. Do we have a statistic out and how many have a trust?

SENATOR BISHOP stated it isn't how many are going to die, it's how many who die may have used this provision in the law that we have. He thought Bruce McKinnis, the Department of Revenue,

stated that the worse case scenario is \$300,000.

SENATOR DOHERTY commented he was trying to figure out how to deal with this new animal. It is almost as if these contingent avoidance things are like cat and dog bills. We have to go at them at the other side as opposed to the side we got at the cat and dog bill because he could see having the bill go through the Senate and go through the House and then be on the list of the dog and cat bill and then trying to match up any moneys in HB 2 with reduction and at that point the legislature might be able to do it. Until then he didn't know if you could and especially with a bill like this that may have \$150,00 or \$300,000. You are going to have to do it with the worst case scenario and hope because if you don't, you are going against the spirit of the contagious vagueness provision, whatever you want to call it, but unless you do that way, how are we going to know.

SENATOR HALLIGAN stated if these bills don't go the Conference Committee, if we have to amend them, they would have missed the deadlines that have passed and then they would wait for the last several days so you have to have 2/3 vote to get them back on the floor, unless you don't by some previous motion.

CHAIRMAN HARP stated that with this particular bill because of the unknown quantity of the revenue impact, his preference would be to take that section out and let the bill go through. We really don't have anything to hang our hat on, it may be zero or \$150,000 or \$300,000.

SENATOR CRIPPEN stated they changed some of it to make it better.

SENATOR HALLIGAN thought the section should come out for now and let the House come in and deal with it.

CHAIRMAN HARP asked for a motion to take Section 38 out.

Motion/Vote: SENATOR AKLESTAD MOVED THAT THE ABOVE SECTION BE DELETED. MOTION CARRIED UNANIMOUSLY.

CHAIRMAN HARP asked for further discussion on SB 132 amended.

SENATOR AKLESTAD MOVED DO PASS ON 2ND READING AS AMENDED.

GREG PETESCH stated he was a little confused as the status of this bill. Has it been reported from the Judiciary Committee? It has not been printed for 2nd reading. So, this committee will be excising the Judiciary Committee's report last amendment and the corresponding title.

CHAIRMAN HARP stated that was the motion.

SENATOR HALLIGAN stated that was not the intent.

SENATOR CRIPPEN stated that it was referred during order of business #6 to the Rules Committee. It was passed out and then he took it off second reading and referred it to the Rules Committee.

GREG PETESCH stated his question was whether a second reading copy of the bill existed.

SENATOR HALLIGAN asked if the motion that was placed in Judiciary would be on the bill.

GREG PETESCH stated that was what he was trying to figure out.

CHAIRMAN HARP asked why they just didn't adopt this amendment excluding #3 on the first page and item #55 of the Standing Committee report.

GREG PETESCH stated you would just be amending the Judiciary Committee's report.

CHAIRMAN HARP stated that was the motion.

SENATOR CRIPPEN asked why there was a 2nd reading bill.

CHAIRMAN HARP stated it never got to second reading as it was taken off of order of business #6.

CHAIRMAN HARP asked if everyone was clear on what they were doing. All said they were.

SENATOR BECK stated that they were leaving all the amendments in but #3 and #54.

Motion/Vote: MOTION CARRIED UNANIMOUSLY.

CHAIRMAN HARP spoke about the constitutional amendments coming up in several committees and he asked GREG PETESCH how they were treated in the past. People have said they can be tabled, others say not, what has been done in the past?

GREG PETESCH stated in the past it was handled very inconsistently. There have been Rules Committees that have determined that they must be reported from the committee, and there have been Rules Committees that have determined that it is permissible to table a constitutional amendment. He said he was of the opinion that it is permissible to table a constitutional amendment in Committee.

CHAIRMAN HARP stated a bill can be taken from the table on a motion from the floor and it would take 26 votes.

SENATOR BROWN stated that if no one in the Senate voted for the bill and all 100 members of the House of Representatives voted yes, it could still go before the people. So a sponsor of a

constitutional amendment may think it was unfair of them to table a bill because then it would require 26 votes on the floor to get it further through the process. He declared if he was the only one in the Senate who voted for it, it still should have a chance to see if it can get 99 votes from the House of Representatives. That seems to be because of the peculiarity of our Constitution and how it is written, because it applies to a unicameral as well as a bicameral legislature. Theoretically, you can't kill a constitutional amendment in the Senate unless you can put it on the table. It is hard to understand why a constitutional amendment should be treated any different than any other legislation. But a sponsor can always say it isn't fair because what if he can get 24 votes in the Senate and 76 in the House. There is always that possibility.

SENATOR HALLIGAN stated you really have to get back to the importance of the Committee. The Committees have to be that buffer between the floor and others. Out of respect to the Committees if SENATOR HARDING'S committee wanted to table something, that committee ought to be able to do that. We should treat it just like any other bill and if it is a bad bi-partisan bill it ought to be put on the table. I should have to make a motion even if we have to go through that extra hassle. I think we ought to treat them fairly and be able to do the table motion.

SENATOR BROWN asked SENATOR HALLIGAN if his argument was, that the guy who has a constitutional amendment that is tabled, can make that argument on the floor. They are keeping it up there and they are not giving him the opportunity to get it to the other side and I want to have the chance to convince you of that here on the floor and the only way I can do that is if you force it out of committee. He can make that argument.

SENATOR HALLIGAN stated we are keeping the integrity of the committee process by treating it the same way.

CHAIRMAN HARP asked if they wanted to make a determination on how we want to handle this from this point on. I think we should so people can understand that. I personally like the idea of keeping bills in committees that are tabled and requiring 26 votes to bring them out and make the committee work that way.

SENATOR BROWN stated those of us who have been concerned about the way the Constitution applies to the Senate recognize in all other legislation our votes count more heavily than the Representatives but in this one item our votes are equally weighted. I suppose if we adopted the rule that John is talking about, or if we decide to say that a Senate Committee can table a proposed constitutional amendment, that maybe it is more in keeping with the Senate's traditional goal in this process.

SENATOR HALLIGAN stated he thought it kind of balanced things out a little bit because they could put a 100 votes together and pass it and we would have no control on it. We need to have a little

bit of control.

CHAIRMAN HARP stated it had happened once.

GREG PETESCH stated there was one instance when a constitutional amendment got 98 votes in the House, the House reconsidered this action to get an unanimous vote to disenfranchise the Senate and it was not transmitted to the Senate. It was placed on the ballot and approved. It was a provision clarifying residencies for the justice of the peace and city court judges in the city courts.

SENATOR BROWN explained as it had received 100 votes in the House of Representatives it didn't need to be transmitted to the Senate.

GREG PETESCH stated that tabling is the only way the Senate can, if you will, disenfranchise the House.

SENATOR HALLIGAN wanted to go back to his people and see what they said. Maybe an amendment could be proposed.

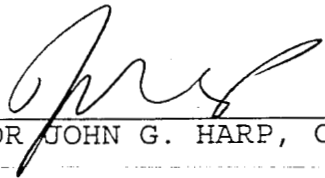
CHAIRMAN HARP said he was comfortable with his caucus.

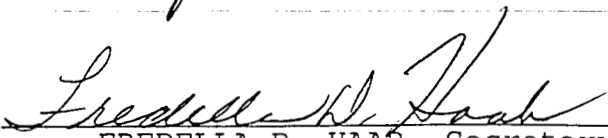
SENATOR AKLESTAD asked if they needed a rule.

CHAIRMAN HARP said no rule was needed.

ADJOURNMENT

Adjournment: Meeting adjourned at 12:30 p.m.


SENATOR JOHN G. HARP, Chairman


FREDELLA D. HAAB, Secretary

JGH/fdh

27. Page 20, line 1.

Following: "."

Insert: "A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court."

28. Page 20, line 2.

Following: "claims"

Insert: "under the governing instrument or applicable law"

29. Page 21, line 30.

Strike: "(C)"

Insert: "(B)"

30. Page 38, line 30.

Following: "decedent,"

Insert: "then"

31. Page 39, line 11.

Following: "instrument,"

Insert: "then"

32. Page 41, line 20.

Following: "."

Insert: "A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide."

33. Page 41, line 21.

Following: "is"

Insert: "only"

Following: "for"

Strike: "a payment made or other action"

Insert: "actions"

Following: "taken"

Insert: "2 or more business days"

Following: "after"

Insert: "the actual receipt by"

34. Page 41, line 22.

Strike: "received"

Insert: "of"

Following: "notice"

Strike: remainder of line 22 through "section"

Following: "."

Insert: "The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b)."

35. Page 41, line 23.

Following: "(b)"

Insert: "The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section."

36. Page 41, line 25.

Following: "."

Insert: "Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party."

37. Page 41, line 30.

Following: "."

Insert: "In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property."

38. Page 42, line 1.

Following: "."

Insert: "A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court."

39. Page 42, line 4.

Following: "A"

Strike: "person"

Insert: "bona fide purchaser"

Following: "property"

Strike: "for value and without notice"

40. Page 42, line 12.

Following: "law"

Insert: ", other than the federal Employee Retirement Income Security Act of 1974, as amended,"

41. Page 44, line 14.
Following: "."

Insert: "A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship."

Following: "is"

Insert: "only"

Following: "for"

Strike: "a payment made or other action"

Insert: "actions"

42. Page 44, lines 15 and 16

Following: line 14

Insert: "2 or more business days"

Following: "after" on line 15

Insert: "the actual receipt by"

Following: "party"

Strike: "received"

Insert: "of"

Following: "notice"

Strike: remainder of line 15 through "section" on line 16

Following: "."

Insert: "The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b)."

43. Page 44, line 17.

Following: "(b)"

Insert: "The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred."

44. Page 44, line 24.

Following: "."

Insert: "In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The

court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property."

45. Page 44, line 26.

Following: line 25

Insert: "A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court."

46. Page 44, line 28.

Following: "A"

Strike: "person"

Insert: "bona fide purchaser"

47. Page 44, line 29.

Strike: "for value and without notice"

48. Page 45, line 8.

Following: "law"

Insert: ", other than the federal Employee Retirement Income Security Act of 1974, as amended,"

49. Page 46, line 6.

Following: "provided"

Insert: "otherwise"

50. Page 54, line 16.

Insert: "Section 33. Section 72-16-308, MCA, is amended to read:

"72-16-308. Tax to be on clear market value -- deductions allowed in determining value -- valuation of certain farm and business property. (1) The tax ~~se~~ imposed ~~shall~~ must be upon the clear market value of ~~such~~ the property passing by ~~any-such~~ transfer to each person, institution, association, corporation, or body politic at the rates ~~hereinafter~~ prescribed in this section and only upon the excess of the exemption ~~hereinafter~~ granted to ~~such~~ the person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property ~~se~~ passing by ~~any-such~~ the transfer, the following deductions and no other ~~shall be~~ are allowed:

(a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;

- (b) expenses of funeral and last illness;
- (c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;
- (d) the ordinary expenses of administration, including:
 - (i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;
 - (ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and
- (e) federal estate taxes due or paid; and
- (f) the annual gift exclusion provided in section 2503(b) of the Internal Revenue Code.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under 72-16-331 through 72-16-342."

Renumber: subsequent sections

51. Page 55, lines 13 and 14.

Strike: "35"

Insert: "36"

-END-

MONTANA SENATE
1995 LEGISLATURE
RULES COMMITTEE
ROLL CALL VOTE

DATE 2-13-95 BILL NO. SB 132 NUMBER 2

MOTION: remove section 38

NAME	AYE	NO
GARY AKLESTAD	✓	
TOM BECK	✓	
BRUCE CRIPPEN	✓	
STEVE DOHERTY	✓	
MIKE HALLIGAN		
ETHEL HARDING	✓	
JUDY JACOBSON		
FRED VAN VALKENBURG		
BOB BROWN, VICE CHAIRMAN	✓	
JOHN HARP, CHAIRMAN	✓	
	✓	

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By CHAIRMAN JOHN G. HARP, on April 4, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John G. Harp, Chairman (R)
Sen. Robert "Bob" Brown, Vice Chairman (R)
Sen. Gary C. Aklestad (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Ethel M. Harding (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Judy H. Jacobson (D)

Members Excused: Sen. Bruce D. Crippen (R)
Sen. Fred R. Van Valkenburg (D)

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Fredella Haab, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 132

Discussion:

Greg Petesch explained the rules and statutes provided when the Governor's amendments were sent to the originating House, that House had to accept or reject the Governor's amendments and transmit the bill along with acceptance or rejection of the amendments to the second house. He explained the procedure had not been followed for SB 132. The failed motion to concur on the Governor's amendments could have been treated as rejection of the amendments or there could have been another motion to reject the amendments. The Joint Rules required it to be treated as an amendment to the whole. He explained under Senate Rules the rejection of the amendment could be treated as a failure but the Senate had not transmitted the amendment to the House. Even though the House had already acted on the amendment, the Senate still need to transmit it to comply with the rules.

SEN. BOB BROWN asked what action Mr. Petesch would advise. Greg Petesch suggested the Senate either transmit the bill or take a vote to reject the Governor's amendments. SEN. BROWN stated he did not think it would help to reject the Governor's amendments. Greg Petesch advised some Senators were of the opinion that no positive action had been taken in the Senate. SEN. BROWN asked where in the Senate Rules it indicated the Senate should do that. Greg Petesch explained at the present time there was only a failed motion. The Senate had not acted positively to accept or reject the Governor's amendments.

SEN. BROWN argued if it was treated an amendment, as the Joint Rules stated, then the final disposition of that motion was that the amendment had failed. Greg Petesch clarified the motion to accept had failed. SEN. BROWN expressed he understood that was what could be said. Greg Petesch stated if that was what the Senate wished to do, then that was the Senate's prerogative. SEN. BROWN expressed concern that a policy should be adopted for the situation in the future.

SEN. STEVE DOHERTY suggested the Senate make a positive motion to reject the amendment. CHAIRMAN JOHN HARP added the amendment could then be transmitted to the House.

SEN. BROWN stated he wanted to clarify the Senate Rules provided for that.

CHAIRMAN HARP stated that was not necessary. The intent was simply to set a standard for instances where there was no positive motion to either reject or accept the Governor's amendments. He explained the question in the particular situation was how to handle bringing a motion to accept the Governor's amendments. He added someone would make a substitute motion to reject, vote and be done with it.

SEN. BROWN asked what would happen if SEN. AL BISHOP prevailed. CHAIRMAN HARP said it would be transmitted to the House and the House would vote on it.

SEN. GARY AKLESTAD stated he did not understand the necessity of a positive motion especially on the amendment.

CHAIRMAN HARP noted SB 132 was no longer before the Committee of the Whole; it had been acted upon and needed to be transmitted to the House. He explained SEN. BISHOP would get up on the floor and make a motion to reconsider which would be out of order because the last motion was made on March 30th. He asked what was the wish of the Committee?

SEN. BROWN stated they needed to make a decision because the situation would come up again.

CHAIRMAN HARP recommended the motion be allowed on Second Reading, be rejected and sent to the House. He suggested the

situation should have been handled that way the first time. A mistake had been made, the motion failed and the Senate had not made a substitute motion.

Greg Petesch noted technically the Senate had neither a concurrence or rejection to transmit to the second House. He recalled an instance where the Governor's Amendments had remained in the Senate for several successive days. He noted that situation would be historic precedent for requiring positive action from the Senate to transmit on the Governor's amendment.

SEN. BROWN summarized if a motion to reject was made and passed the situation would be fine, however if the motion failed the Senate would have to return the situation to the Rules Committee. CHAIRMAN HARP alleged the House should not have acted before the Senate transmitted the bill.

Motion: SEN. DOHERTY MADE THE MOTION TO DISPOSE OF THE GOVERNOR'S AMENDMENTS WITH A POSITIVE MOTION.

CHAIRMAN HARP stated the positive action had to be taken whether the amendment was eventually accepted or rejected to allow the second House to act.

Vote: The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. TOM BECK MADE THE MOTION SB 132 BE PLACED ON SECOND READING. The Motion CARRIED UNANIMOUSLY.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 132

Call to Order: By SENATOR AL BISHOP, CHAIRMAN, on April 12,
1995, at 4:14 P.M.

ROLL CALL

Members Present:

Sen. Al Bishop (R)
Sen. Mike Halligan (D)
Sen. Reiny Jabs (R)
Rep. Deb Kottel (D)
Rep. Shiell Anderson (R)
Rep. Daniel W. McGee (R)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Staff Attorney
Judy Feland, Secretary

{Tape: No tape was made of this meeting.}

Motion: SENATOR HALLIGAN MOVED THAT THE SENATE ACCEDE TO THE
GOVERNOR'S AMENDMENTS, AS PASSED BY THE HOUSE.

Discussion: REPRESENTATIVE KOTTEL strongly opposed the motion, saying the majority of the people in the House did not agree with the Governor's amendments. It had been offered as a compromise by SPEAKER MERCER, and that not understanding the bill or the amendments, the representatives were persuaded to vote for the bill believing it would go back to the Governor, or at least the full committee. She said she objected because the contract entered into by the insurers and the insured would not be honored. Although a spouse may waive the inclusion, most people when they remarry, do not engage in adequate estate planning. So the consequence of the law would be to undo the wishes of the deceased. In regard to the argument that life insurance could be used to disinherit a spouse, she asked if there was even a case in Montana where the allegation was made. SENATOR HALLIGAN said he knew of no case. REPRESENTATIVE KOTTEL argued that it would be very difficult to use a policy to disinherit a spouse because it would only deplete the estate by the amount of the insurance premiums. To significantly deplete the estate, a person would have to take out a huge policy with extremely large premiums and be able to maintain those premiums until their date of death.

The person would also need to know with some certainty when they were going to die. She said that is was possible, but unlikely the Governor's amendments would close up this possibility. However, she felt the amendments caused tremendous problems. It would not allow a spouse to undo the wishes of the decedent in several situations that no one would consider equitable. She used the example of a person who had remarried, buying a life insurance policy for their children. Perhaps a spendthrift second husband would petition the augmented estate, thereby destroying the legal and reasonable beneficiary designation of the policy. **SENATOR BISHOP** explained that he would like the opportunity to try once more to explain his position on the Senate floor. He felt there had been many misconceptions among the members and misleading statements had been made. He pointed out that the loophole had existed for the past 40 years. Usually, there would be no problem if in planning estates and insurance policies, the spouse gave consent in the first place. **SENATOR JABS** stated that he believed the bill had a fair hearing on the floor already. **SENATOR HALLIGAN** suggested if the Governor vetoed the bill, then **Professor Ed Eck** could work with the State Bar to create a new bill in two years. **SENATOR BISHOP** stated that people in a second marriage could sign a ante-nuptial agreement as part of their estate planning to guarantee the consent of the spouse, and thus avoid any questions later. **REPRESENTATIVE McGEE** stated his intent to: 1) protect the spouse, and 2) to protect the contractual agreements of insurance policies. He was concerned that the two seemed mutually exclusive. He was also concerned about the "key person" issue in corporations, thinking incentives might be discouraged for those businesses.

Vote: The MOTION CARRIED 4-2 on a show of hands vote, with **SENATOR JABS AND REPRESENTATIVE KOTTEL** voting, "no."

ADJOURNMENT

Adjournment: CHAIRMAN BISHOP adjourned the meeting at 4:40 P.M.



AL BISHOP, Chairman



JUDY FELAND, Secretary

AB/jf